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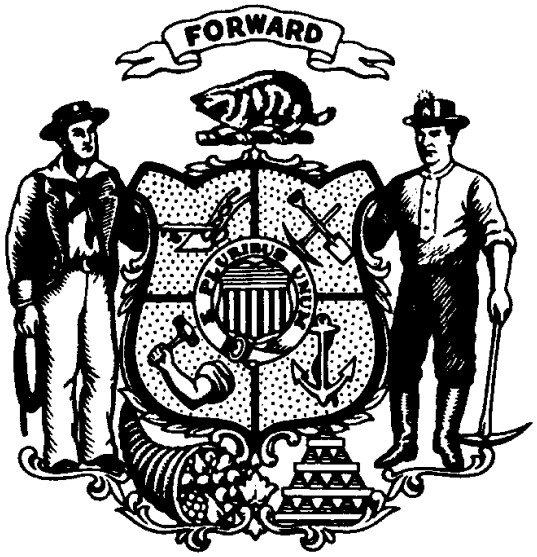

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EMERGENCY RULES NOW IN EFFECT

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule−making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule−making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

EMERGENCY RULES NOW IN EFFECT (4)

Agriculture, Trade & Consumer Protection

1. Rules adopted creating **Ch. ATCP 36**, relating to the sale and use of pesticides containing the active ingredient clomazone.

Finding of Emergency

(1) Pesticides containing the active ingredient clomazone are used at spring planting on soybeans, tobacco, peppers, pumpkins, peas, cabbage and cucumbers. Clomazone is an effective herbicide which inhibits the formation of chlorophyll in target weeds.

(2) Clomazone is volatile. Off−target movement from clomazone applications can affect non−target plants located hundreds of feet from the application site. Off−target movement from clomazone applications can damage non−target plants by inhibiting the formation of chlorophyll in those plants.

(3) Off−target movement has occurred in many clomazone applications to date. Non−target plants exposed to off−target movement from clomazone applications turn yellow or white. Damage from 1997 clomazone applications was apparently more severe and long lasting than in prior years. In 1997, the department received 49 complaints of off−target movement to non−target plants. These complaints comprised 20% of all pesticide complaints received by the department in 1997. Department field staff report that these complaints represented only a fraction of the total number of clomazone off−target movement incidents that occurred. Off−target movement incidents have caused widespread public anger and concern, and have impaired public confidence in pesticide applications.

(4) The department proposes to adopt rules restricting the use of clomazone herbicides. The proposed restrictions are reasonably designed to reduce or eliminate damage to non−target plants from clomazone applications. Without these restrictions, continued clomazone applications will likely result in continued incidents of off−target movement and nontarget damage during the 1998 planting and growing season.

(5) Clomazone herbicides are commonly applied during spring planting. The department must adopt restrictions by emergency rule in order for those restrictions to take effect prior to the 1998 spring planting and application period. The department finds that an emergency rule under s. 227.24, Stats., is imperatively required to preserve the public peace and welfare in 1998, pending completion of normal rulemaking procedures under ch. 227, Stats.

Publication Date: **March 15, 1998**
Effective Date: **March 15, 1998**
Expiration Date: **August 12, 1998**
Hearing Date: **April 28, 1998**

2. Rules adopted creating **ss. ATCP 10.68** and **11.58**, relating to fish farms and imports of live fish and fish eggs.

Exemption From Finding of Emergency

(1) The department of agriculture trade and consumer protection is adopting this emergency rule to implement s. 95.60, Stats., which was created by 1997 Wis. Act 27.

(2) Section 9104(3xr) of 1997 Wis Act 27 authorizes the department to adopt this emergency rule without the normal finding of emergency. It further provides that the emergency rule will remain in effect until January 1, 1999 or until a permanent rule takes effect, whichever comes first.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07(1), 95.60(4s)(e) and (5)

Statutes interpreted: s. 95.60

This emergency rule implements s. 95.60, Stats., by doing all of the following:

Establishing an interim procedure for registering fish farms in 1998. The department plans to adopt permanent rules, which may differ from this emergency rule, relating to registration of fish farms after 1998.

Establishing interim permit requirements for importing live fish or fish eggs into Wisconsin.

Requiring fish farm operators and fish importers to keep records.

Fish Farms

Registration

Under s. 95.60, Stats., as enacted by 1997 Wis. Act 27 effective October 14, 1997, the Department of Agriculture, Trade and Consumer Protection (DATCP) is responsible for registering fish farms in Wisconsin. The new annual registration program replaces an annual licensing program previously administered by the Department of Natural Resources (DNR).

DNR licensed more than 2000 fish farms for calendar year 1997. Fish farms previously licensed by DNR must now be registered with DATCP. DATCP's 1998 registration requirement takes effect immediately after DNR's 1997 license requirement expires.

Registration Procedures; General

This emergency rule establishes interim fish farm registration procedures. Under this emergency rule:

· ·No person may operate a fish farm without a DATCP registration certificate. A registration certificate expires on December 31, 1998.

· ·A registration certificate is effective on the day it is issued except that, if a fish farm operator licensed by DNR in 1997 files a renewal application with DATCP by April 10, 1998, the DATCP registration certificate is retroactive to January 1, 1998.

· ·Fish farm registrations are not transferable between persons or locations. A person who operates 2 or more fish farms at non–contiguous locations must obtain a separate registration certificate for each location.

Registration Categories

A fish farm operator must hold a type A, B, C or D registration certificate for that fish farm:

· ·A type A registration is normally required for a fish farm at which the operator does any of the following:

*Hatches fish or produces fish eggs at that fish farm for sale or trade to any person.

*Allows public fishing, for a fee, for fish hatched at that fish farm.

· ·A type B registration is normally required if the fish farm operator does any of the following and does not hold a type A registration:

*Allows public fishing at the fish farm for a fee.

*Sells or trades fish, from the fish farm, to any person.

··A type C registration authorizes the registrant to operate a fish farm. It does not authorize activities for which a type A or B registration is required, except that a type C registrant may do either of the following without a type A or B registration:

*Sell minnows to any person

*Sell fish or fish eggs to a type A registrant.

· ·A type D registration authorizes the registrant to sell or trade fish from a fish farm without a type A or B registration if all of the following apply:

*The operator does not hatch fish, produce fish eggs or permit public fishing for a fee at that fish farm.

*The fish farm consists solely of ponds used to hold or grow fish.

*The operator holds a type A or B registration certificate for another fish farm located on a nonadjacent parcel of land.

Registration Fees

This emergency rule establishes the following registration fees:

· ·Type A registration	$50.00
· ·Type B registration	$25.00
· ·Type C registration	$ 5.00
· ·Type D registration	$ 5.00

School systems operating fish farms must register with DATCP but are exempt from fees. The operator of a fish farm registered for less than a full year must pay the full year's fee.

If an operator was licensed by DNR in 1997, but files a renewal application with DATCP after April 10, 1998, the operator must pay a late renewal fee equal to 20% of the registration fee or $5.00, whichever is greater.

Deadlines for DATCP Action on Registration Applications

If a person licensed by DNR to operate a fish farm in 1997 applies to register that fish farm with DATCP, DATCP must grant or deny the application within 30 days after the applicant files a complete application, including the correct fee, with DATCP. DATCP will deny the application, if the applicant has not filed a 1997 "private fish hatchery annual report" with the department of natural resources.

If a person applying to register a fish farm was not licensed by the department of natural resources to operate that fish farm in 1997, DATCP must grant or deny that person's registration application within 30 days after all of the following occur:

·The applicant files a complete application including the correct fee.

·DNR informs DATCP that DNR has approved the facility.

Recordkeeping

This emergency rule requires a fish farm operator to keep the following records for all fish and fish eggs which the operator receives from or delivers to another person:

·The name, address, and fish farm registration number if any, of the person from whom the operator received or to whom the operator delivered the fish or fish eggs.

·The date on which the operator received or delivered the fish or fish eggs.

·The location at which the operator received or delivered the fish or fish eggs.

·The size, quantity and species of fish or fish eggs received or delivered.

A fish farm operator must make these records available to DATCP, upon request, for inspection and copying.

Denying, Suspending or Revoking a Registration

DATCP may deny, suspend or revoke a fish farm registration for cause, including any of the following:

· Violating ch. 95, Stats., or applicable DATCP rules.

· Violating the terms of the registration

· Preventing a DATCP employee from performing his or her official duties, or interfering with the lawful performance of those duties.

· Physically assaulting a DATCP employee performing his or her official duties.

·Refusing or failing, without just cause, to produce records or respond to a DATCP subpoena.

· Paying registration fees with a worthless check.

Fish Imports

Import Permit Required

This rule prohibits any person from importing into this state, without a permit from DATCP, live fish or fish eggs for any of the following purposes:

· ·Introducing them into the waters of the state.

· ·Selling them as bait, or for resale as bait.

· ·Rearing them at a fish farm, or selling them for rearing at a fish farm.

A copy of the import permit must accompany every import shipment. An import permit may authorize multiple import shipments. There is no fee for an import permit. A person importing a non–native species of fish or fish eggs must also obtain a permit from the department of natural resources.

Import Permit Contents

An import permit must specify all of the following:

· ·The expiration date of the import permit. An import permit expires on December 31 of the year in which it is issued, unless DATCP specifies an earlier expiration date.

· ·The name, address and telephone number of the permit holder who is authorized to import fish or fish eggs under the permit.

· ·The number of each fish farm registration certificate, if any, held by the importer.

· ·Each species of fish or fish eggs which the importer is authorized to import under the permit.

· ·The number and size of fish of each species, and the number of fish eggs of each species, that the importer may import under the permit.

· ·The purpose for which the fish or fish eggs are being imported.

· ·The name, address and telephone number of every source from which the importer may import fish or fish eggs under the permit.

· ·The name, address, telephone number, and fish farm registration number if applicable, of each person in this state who may receive an import shipment under the permit if the person receiving the import shipment is not the importer.

Applying for an Import Permit

A person seeking an import permit must apply on a form provided by DATCP. The application must include all of the following:

· ·All of the information which must be included in the permit (see above).

· ·A health certificate for each source from which the applicant proposes to import fish or fish eggs of the family salmonidae.

DATCP must grant or deny a permit application within 30 days after it receives a complete application and, in the case of non–native fish DNR approval.

Denying, Suspending or Revoking an Import Permit

DATCP may deny, suspend or revoke an import permit for cause, including any of the following:

· ·Violating applicable statutes or rules.

· ·Violating the terms of the import permit, or exceeding the import authorization granted by the permit.

· ·Preventing a department employe from performing his or her official duties, or interfering with the lawful performance of his or her duties.

· ·Physically assaulting a department employe while the employe is performing his or her official duties.

· ·Refusing or failing, without just cause, to produce records or respond to a department subpoena.

Import Records

A person importing fish or fish eggs must keep all of the following records related to each import shipment, and must make the records available to the department for inspection and copying upon request:

· ·The date of the import shipment.

· ·The name, address and telephone number of the source from which the import shipment originated.

· ·The name, address, telephone number, and fish farm registration number if applicable of the person receiving the import shipment, if the person receiving the import shipment is not the importer.

· ·The location at which the import shipment was received in this state.

· ·The size, quantity and species of fish or fish eggs included in the import shipment.

Salmonidae Import Sources; Health Certificates

DATCP may not issue a permit authorizing any person to import fish or fish eggs of the family salmonidae (including trout, salmon, grayling, char, Dolly Vardon, whitefish, cisco or inconnu) unless a fish inspector or an accredited veterinarian certifies, not earlier than January 1 of the year preceding the year in which the applicant applies for the permit, that the fish and fish eggs from the import source were determined to be free of all of the following diseases:

· ·Infectious hematopoietic necrosis.

· ·Viral hemorrhagic septicemia.

· ·Whirling disease, except that eggs from wild stocks need not be certified free of whirling disease.

· ·Enteric redmouth.

· ·Ceratomyxosis.

A fish inspector issuing a health certificate must be a fish biologist who is certified, by the American Fisheries Society or the state of origin as being competent to perform health inspections of fish.

The accredited veterinarian or fish inspector must issue a health certificate in the state of origin, based on a personal inspection of the fish farm from which the import shipment originates. In the inspection, an accredited veterinarian or a fish inspector must examine a random statistical sample of fish drawn from each lot on the fish farm. From each lot, the veterinarian or inspector must examine a number of fish which is adequate to discover, at the 95% confidence level, any disease that has infected 5% of the lot.

Publication Date: **March 16, 1998**
Effective Date: **March 16, 1998**
Expiration Date: **See section 9104 (3xr) 1997 Wis. Act 27**
Hearing Date: **April 27, 1998**

3. Rules adopted amending **s. ATCP 75.015 (7)(c),** relating to the retail food establishment license exemption for restaurant permit holders.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) currently licenses and inspects retail food stores (grocery stores, convenience stores, bakeries, delicatessens, etc.) under s. 97.30, Stats., and ch. ATCP 75, Wis. Adm. Code.

The state of Wisconsin department of health and family services (DHFS) currently licenses (permits) and inspects restaurants under subch. VII of ch. 254, Stats., and ch. HFS 196, Wis. Adm. Code.

Recently, many retail food stores have added restaurant operations, and vice versa.

Under current rules, a person who operates a food store and restaurant at the same location may be subject to duplicate regulation by DATCP and DHFS. The operator may be subject to duplicate licensing, duplicate license fee payments, and duplicate inspection based on different (and sometimes inconsistent) rules.

The current duplication is unnecessary, confusing, and wasteful of public and private resources. This temporary emergency rule is needed to eliminate duplication, and protect public welfare, during the food store license year that begins on July 1, 1998. DATCP also plans to adopt a permanent rule according to normal rulemaking procedures under ch. 227, Stats.

This emergency rule applies to food store licenses issued by DATCP, but does not apply to food store licenses issued by agent cities and counties under s. 97.41, Stats. DATCP plans to adopt permanent rules for all food store licenses, whether issued by DATCP or by agent cities or counties, effective July 1, 1999.

Publication Date: **July 1, 1998**
Effective Date: **July 1, 1998**
Expiration Date: **November 28, 1998**

4. Rules adopted amending **ss. ATCP 81.50 (2), 81.51 (2),** and **81.52 (2),** relating to grade standards for colby and monterey (jack) cheese.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds that an emergency exists and that an emergency rule is necessary for economic reasons to protect the public welfare of the citizens of Wisconsin. The facts constituting the emergency are as follows:

(1) DATCP has adopted standards for grades of cheese manufactured and sold in Wisconsin under s. 97.177, Stats., and ch. ATCP 81, Wis. Adm. Code. Any cheese which carries a state grade mark must conform to the standards and characteristics of the labeled grade.

(2) Under current rules, colby and monterey (jack) cheese must contain numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

(3) Changes in cheese manufacturing technology, packaging and equipment have made it extremely difficult for many processors and packagers to achieve the numerous mechanical openings or open body character required by these top two grade categories. A majority of today's wholesale buyers and packagers prefer a closed body cheese for a variety of reasons, including ease of shredding and the ability to package "exact–weight" pieces with minimal variation and waste.

(4) Currently, a closed body cheese may be labeled or sold as Wisconsin grade B or "not graded." It cannot be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand), nor can it command the premium price associated with these top two grade categories.

(5) Wisconsin is the only state with its own grade standards for colby and monterey (jack) cheese. The United States Department of Agriculture modified its grade standards for colby and monterey jack cheese in 1995 and 1996, respectively, in response to industry requests to allow an open or closed body. Buyers who cannot obtain the desired graded product in Wisconsin will likely switch to suppliers from other states. Once customers are lost they are difficult to regain.

(6) Wisconsin's dairy industry plays a major role in our state's economy. Approximately $3 billion or 90% of Wisconsin's milk production goes into the manufacture of cheese. Lost business revenues harm the dairy industry, cause increased unemployment, and have a negative impact on the state's economy.

(7) Pending the adoption of rules according to the normal administrative rulemaking procedures, it is necessary to adopt emergency rules under s. 227.24, Stats. to protect the public welfare based on an economic emergency for the state's dairy industry and the subsequent impact on the general economy and citizens of this state.

Publication Date: **August 8, 1998**
Effective Date: **August 8, 1998**
Expiration Date: **January 4, 1999**
Hearing Date: **September 14, 1998**

EMERGENCY RULES NOW IN EFFECT

Commerce

(Petroleum Environmental Cleanup Fund, Ch. ILHR 47)

Rules adopted revising **ch. ILHR 47**, relating to the petroleum environmental cleanup fund.

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

The facts constituting the emergency are as follows. Under ss. 101.143 and 101.144, Stats., the Department protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. Claims made against the PECFA fund are currently averaging over $15,000,000 per month. Approximately $7,500,000 per month is allotted to the fund for the payment of claims. The fund currently has a backlog of $250,000,000 representing almost a 30−month backlog of payments to be made to claimants. Immediate cost saving measures must be implemented to mitigate this problem.

The rules make the following changes to manage and reduce remediation costs:

Administrative Elements.

These changes include updating the scope and coverage of the rules to match current statutes, clarifying decision making for remedial action approvals and providing new direction to owners, operators and consulting firms.

Progress Payments.

Progress payments are proposed to be reduced for some owners and sites. The criteria that trigger payments will now also be based on outcomes. The timing of payments from the fund is designed to benefit those that get sites successfully remediated and to create incentives for the use of the flexible closure tools and natural attenuation tools that were created by the Department of Natural Resources. Applications submitted before the effective date of the new rules would still be subject to the current rules.

Remedial Alternative Selection.

These provisions would create two different paths for funding for sites. Through the use of a group of environmental factors, the risk of a site will be determined. Active treatment systems that use mechanical, engineered or chemical approaches would not be approved for a site without one or more environmental factor present. Approved treatments for sites without environmental factors would be limited to non−active approaches, excavation, remediation by natural attenuation and monitoring of the contamination. The five environmental factors are:

· A documented expansion of plume margin;

· A verified contaminant concentration in a private or public potable well that exceeds the preventive action limit established under ch. 160;

· Soil contamination within bedrock or within 1 meter of bedrock;

· Petroleum product, that is not in the dissolved phase, present with a thickness of .01 feet or more, and verified by more than one sampling event; and

· Documented contamination discharges to a surface water or wetland.

Reimbursement Provisions.

Several incentives are added to encourage owners and consultants to reduce costs whenever possible. Provisions are added for the bundling of services at multiple sites to achieve economy of scale and for using a public bidding process to reduce costs. In addition, owners are encouraged to conduct focused remediations that utilize all possible closure tools. To encourage this approach, if a site can be investigated and remedied to the point of closure for $80,000 or less, the consultant can complete the action without remedial alternative approvals or the risk of the site being bundled or put out for bidding. The consultant is provided additional freedom under the structure of the fund in order to facilitate remediation success. Special priority processing of these cost−effective remediations would also be provided.

Review of Existing Sites.

These changes give the Department more ability to redirect actions and impose cost saving measures for sites that are already undergoing remedial actions. Reevaluations including, the setting of cost caps would be done on sites chosen by the Department.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

Publication Date: **April 21, 1998**
Effective Date: **April 21, 1998**
Expiration Date: **September 18, 1998**
Hearing Date: **May 29, 1998**
Extension Through: **November 16, 1998**

EMERGENCY RULES NOW IN EFFECT

Department of Commerce

(Building & Heating, etc., Chs. Comm/ILHR 50−64)

Rule adopted revising **ch. ILHR 57**, relating to an exemption of multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators from the accessibility laws.

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public peace, health, safety and welfare. The facts constituting the emergency are as follows:

Chapter ILHR 57, subchapter II, Wis. Adm. Code, establishes design and construction requirements for accessibility in covered multifamily housing as defined in s. 101.132 (1) , Stats., formerly s. 106.04 (2r) (a) 4., Stats. The design and construction requirements in ch. ILHR 57, subchapter II, are based on the multifamily accessibility law in s. 101.132,Stats. The state law on accessibility in covered multifamily housing is substantially equivalent to the federal Fair Housing law of 1988. The proposed changes in ch. ILHR 57, subchapter II, are in response to 1997 Wis. Act 237 that exempts multilevel multifamily dwelling units without elevators from the multifamily accessibility law. This state law change does not conflict with the federal Fair Housing law since the federal Fair Housing law does not cover multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators.

The proposed rule eliminates only those sections requiring access to and accessible features within multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators. If the rules are not revised an inconsistency between the statutes and the administrative rules would result. This inconsistency may cause confusion in application and enforcement within the construction industry and may result in construction delays, which may be costly.

Publication Date: **June 17, 1998**
Effective Date: **June 17, 1998**
Expiration Date: **November 14, 1998**

EMERGENCY RULES NOW IN EFFECT

Commerce

(Rental Unit Energy Efficiency, Ch. Comm 67)

Rules were adopted revising **ch. Comm 67,** relating to rental unit energy efficiency.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under s. 101.122, Stats., Department protects public health, safety, and welfare by promulgating energy efficiency requirements for rental units. 1997 Wis. Act 288 amends s. 101.122, Stats., to change the scope of the rules that the Department develops under that law. Those portions of the Act were effective the day after publication, and the rules adopted by the Department under the authority of that law are hereby amended to be consistent with 1997 Wis. Act 288.

This emergency rule excludes the following buildings from the rental unit energy efficiency

· Buildings of one or two rental units that were constructed after December 1, 1978.

· Buildings of three or more rental units that were constructed after April 15, 1976.

· Condominium buildings of three or more dwelling units.

This rule also limits the application of rental unit energy efficiency requirements to the following items:

· Attics

· Furnaces and boilers

· Storm windows and doors, with an option to meet an air infiltration performance standard for the thermal envelope of the building

· Sill boxes

· Heating and plumbing supply in unheated crawlspaces

· Shower heads

This rule also eliminates the expiration of the certificate of code compliance after 5 years.

Publication Date: **June 30, 1998**
Effective Date: **June 30,1998**
Expiration Date: **November 27,1998**
Hearing Date: **August 14, 1998**

EMERGENCY RULES NOW IN EFFECT

Commerce

(Barrier–Free Design, Ch. Comm 69)

Rule adopted creating **s. Comm 69.18 (2) (a) 2. c.**, relating to vertical access to press box facilities.

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public peace, health, safety and welfare. The facts constituting the emergency are as follows:

Chapter Comm 69, establishes design and construction requirements for accessibility in all buildings and facilities. Chapter Comm 69 is based on the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Titles II and III of the federal Americans with Disabilities Act. A number of public school districts are in the process of constructing press boxes at athletic fields. In accordance with both the federal and state rules, an elevator must be used to provide access to a press box. This requirement causes a serious financial hardship on the school districts, since the press boxes involved will be very small and will accommodate only a few people. The federal ADAAG standards are in the process of being revised to exempt state and local government buildings that are not open to the general public from providing elevator access to floor levels that are less than 500 square feet and accommodate less than 5 persons.

The Joint Committee for Review of Administrative Rules (JCRAR) held a hearing on March 31, 1998 to receive public comments on the rules in chapter Comm 69 that requires vertical access to press box facilities. On May 6, 1998, the JCRAR held an executive session to consider this issue and has requested the agency to promulgate an emergency rule adopting the federal exemption for certain publicly controlled facilities, such as press boxes, from vertical access for people with disabilities. The emergency rule is to be promulgated no later than May 15, 1998.

The proposed rule eliminates the requirement that in government owned or operated buildings an elevator must be used to provide access to certain small areas with low capacity. The emergency rule benefits not only school districts, but other small state and local government buildings as well.

Publication Date: **May 15, 1998**
Effective Date: **May 15, 1998**
Expiration Date: **October 12, 1998**
Hearing Date: **August 31, 1998**
Extension Through: **December 10, 1998**

EMERGENCY RULES NOW IN EFFECT

Commerce

(Financial Resources for Communities, Chs. Comm 105 to 128)

Rules adopted creating **ch. Comm 118,** relating to the Wisconsin Promise Challenge Grant Program.

Finding of Emergency

On July 16, 1998, 1997 Wis. Act 237, took effect. The act created Section 1901(lz) which appropriated $424,000 for fiscal year 1998–99 that may be awarded in the form of grants by the National and Community Service Board attached to the Department of Commerce to any countywide consortium. Countywide consortiums who agree to provide five fundamental resources intended to mentor, nurture, protect, teach and serve persons under the age of 26 years are eligible to receive Wisconsin Promise Challenge Grants. The amount of the grant ranges from $3,000 to $15,000, depending on the number of underserved youth who are to receive the five fundamental resources. In order to be eligible, the grant recipient is required to match the grant, in cash, in an amount that is not less than twice the amount of the grant money received. In addition the law, specifies conditions on the use of the grant monies and requires documentation on the number of underserved youths who received the five fundamental resources and the positive outcomes and result of those efforts. Since funds are only available for this fiscal year and the law sunsets on January 1, 2000, the Department is promulgating an emergency rule in order to make these funds and the grant program available as quickly as possible so counties may provide the five fundamental resources to underserved youth.

This emergency rule was developed in consultation with the National and Community Service Board, the Department of Health and Family Services and the Department of Administration.

Publication Date: **September 12, 1998**
Effective Date: **September 12, 1998**
Expiration Date: **February 9, 1999**

EMERGENCY RULES NOW IN EFFECT

Financial Institutions

(Division of Securities)

Rules adopted revising **chs. DFI–Sec 1 to 9**, relating to federal covered securities, federal covered advisers and investment adviser representatives.

Finding of Emergency

The Department of Financial Institutions, Division of Securities, finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows.

Recently enacted legislation in 1997 Wis. Act 316 that is scheduled for publication on July 8, 1998 to become effective the following day on July 9, 1998 made a number of changes to the Wisconsin Uniform Securities Law, principally to conform to changes required under federal legislation in the National Securities Markets Improvement Act of 1996 ("NSMIA").

NSMIA preempted state securities law regulation in two principal areas: (1) prohibiting state securities registration and exemption requirements from being applicable to categories of so–called "federal covered securities," but permitting states to establish certain notice filing requirements (including fees) for such "federal covered securities;" and (2) prohibiting state securities licensing requirements from being applicable to certain investment advisers meeting criteria to qualify as a "federal covered adviser," but permitting states to establish certain notice filing requirements (including fees) for those federal covered advisers that have a place of business in Wisconsin and more than 5 Wisconsin clients.

The legislation in 1997 Wis. Act 316 established notice filing requirements for "federal covered securities" and "federal covered advisers," and in addition, established statutory requirements for the licensing of "investment adviser representatives" (who previously were subject only to a qualification" process in Wisconsin). Comprehensive administrative rules are needed immediately to implement the statutory changes contained in 1997 Wisconsin Act 316, particularly relating to the filing requirements for federal covered securities, federal covered advisers and investment adviser representatives. In order to have such rules in place contemporaneously with the effectiveness of 1997 Wis. Act 316, these emergency rules are adopted on an interim basis until identical permanent rules can be promulgated using the standard rule–making procedures.

Publication Date: **July 7, 1998**
Effective Date: **July 9, 1998**
Expiration Date: **December 6, 1998**
Hearing Date: **September 24, 1998**

EMERGENCY RULES NOW IN EFFECT (2)

Health & Family Services

(Management, Technology & Finance, Chs. HFS 1––)
(Health, Chs. HFS 110––)

1. Rules adopted creating **ch. HFS 13** and revising **ch. HSS 129,** relating to reporting and investigating caregiver misconduct.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Since July 1, 1991, the Department has had rules, s. HSS 129.10, which establish and provide for the maintenance of a registry of persons eligible by training and testing to be employed in Wisconsin as nurse assistants working in hospitals, nurse assistants working in nursing homes, home health agency aides and, since October 1, 1991, hospice program aides. The rules implemented s. 146.40 (4g), Stats. The rules were amended by emergency order effective April 1, 1992, to add to the registry, as directed by s. 146.40 (4g) and (4r), Stats., all substantiated findings of allegations that persons working in any of these caregiver capacities had abused or neglected a resident or patient or misappropriated a resident's or patient's property, and making that information available to prospective employers and other interested persons on request.

This rulemaking order amends ch. HFS 129 to take out of it the misconduct part of the current registry, that is, the part consisting of substantiated findings of misconduct toward clients by caregivers working as nurse aides in hospitals or nursing homes or for home health agencies or hospice programs, and to include -that part in a new ch. HFS 13 created by this order.

A recent session law, 1997 Wis. Act 27, amended s. 146.40 (4g) and (4r), Stats., to provide for expansion of the misconduct part of the registry so that, beginning October 1, 1998, the Department would add to the registry substantiated findings of allegations that

any other person employed by or under contract with a hospital, nursing home, home health agency or hospice program or any person employed by or under contract with any of several other types of facilities, agencies and programs or services licensed, certified or registered by the Department abused or neglected a client served by the facility, agency or program or service or misappropriated a client's property. The other types of "entities" covered by the expanded misconduct part of the registry and the reporting, review and investigation, entering findings and appeal procedures under s. 146.40 (4r), Stats., are the following: community–based residential facilities, residential care apartment complexes (formerly called assisted living facilities), certified adult family homes (only if certified by the Department), licensed adult family homes (only if licensed by the Department), certified community mental health and substance abuse programs or services, rural medical centers and ambulance service providers.

The new ch. HFS 13 covers the structure of the misconduct part of the caregiver registry, the information included in it and release of registry information; a requirement that an entity upon learning of an incident of alleged caregiver misconduct take whatever measures are necessary to protect clients pending a finding; mandatory reporting by entities of allegations of caregiver misconduct, with penalties for failure to report incidents; reporting by other persons; review by the Department of reports received from entities and concerned individuals alleging abuse or neglect of a client or misappropriation of a client's property, and follow–up investigation by the Department as necessary; determination by the Department either that an allegation is or is not substantiated, and notice to the subject of the report, if an allegation is substantiated, that the finding will be entered on the misconduct part of the caregiver misconduct registry, and the consequences of that action (which for some persons employed by or under contract with an entity may mean being barred indefinitely from similar employment and for others being barred from similar employment unless rehabilitation is demonstrated), unless he or she contests that determination by requesting a hearing; notice to the subject of a report that if the finding is included in the registry, he or she may add a rebuttal statement which will be included with the finding; and how to request a hearing, how the hearing will be conducted and the hearing decision.

This order creating ch. HFS 13 and amending ch. HSS 129 is being published as an emergency rulemaking order to take effect on October 1, 1998. That is the date on which the amendments to s. 146.40 (4g) and (4r), Stats., that expand the misconduct part of the registry will take effect. The rules are necessary for implementation of the amended statutes. The intent of the amended statutes and new rules is to better protect clients of the specified Department–regulated facilities, agencies, programs and services from being harmed. The rules are being published as emergency rules so that they can go into effect when the amended statutes take effect rather than up to 9 months later which is how long it will take to promulgate permanent rules.

Publication Date: **October 1, 1998**

Effective Date: **October 1, 1998**

Expiration Date: **February 28, 1999**

2. Rules adopted creating **ch. HFS 12,** relating to caregiver background checks.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Sections 48.685 and 50.065, Stats., recently created by 1997 Wisconsin Act 27, apply to the Department in its functions of licensing, certifying, registering or approving some persons to provide care or treatment to other persons; to county social service and human service departments that license foster homes or treatment foster homes for children and carry out adoption home studies; to private child–placing agencies licensed to do the same; and to school boards that contract for day care programs under s. 120.13(14), Stats. The law also applies to the entities licensed, certified, registered or approved and their employes or contracted service providers.

An agency is prohibited from licensing, certifying, registering or approving a person if the agency knew or should have known that the person has been convicted of, or has a pending charge for, a serious crime, is found to have abused or neglected a client or child or to have misappropriated a client's property; or is required to be credentialed by the Department of Regulation and Licensing (DRL) but whose credential is not current or is limited so as to prevent the provision of adequate client care. Similarly, entities planning to hire or contract with a person expected to have access to clients or children may not hire or contract with the person if the entity knew or should have known of the existence of a prohibited condition.

With respect to a person applying for a license to operate an entity or for approval to reside at an entity, an agency is required to obtain a criminal history search, information contained in the Department's caregiver misconduct registry, DRL information regarding credential status, if applicable, and Department information regarding any substantiated reports of child abuse or neglect and licensing history information. That information must also be obtained by entities for prospective employes and contractors.

The Department is required to develop a background information form and provide it to any regulated or approved person, and a county department and licensed child–placing agency is required to provide it to a foster home or treatment foster home applicant or pre–adoptive applicant and a school board is to provide the Department's background information form to any proposed contracted day care applicant or provider under s. 120.13 (14), Stats. Likewise, an entity is to provide the background information form to any employe or prospective employe having or expected to have access to any of its clients. If the background information form returned to an entity by an employe or prospective employe indicates that the person is not ineligible to be employed or contracted with or permitted to reside at an entity for a reason specified under the statutes or as provided in rule, an entity may employ or contract with the person or permit the person to reside at the entity for not more than 60 days pending the receipt of background check information.

For some serious crimes that would otherwise bar a person from regulatory approval or from being employed by or under contact with or residing at an entity, the statutes permit a person convicted of a crime, provided certain conditions are met, to ask an agency for rehabilitation review, that is, for an opportunity to demonstrate that he or she is rehabilitated and so the bar can be lifted.

These are the Department's rules for administration of ss. 48.685 and 50.065, Stats., as created by Act 27 and amended by 1997 Wisconsin Act 237. The rules repeat the statutory requirements and add more detail for administering them, add procedures for handling rehabilitation review requests, add definitions for "serious crime" and "under the entity's control" and other pertinent definitions and add a crimes list as Appendix A.

The rules are being published by emergency order to take effect on October 1, 1998, the same date that the statutes they implement will take effect, rather than up to 9 months later which is how long it will take to promulgate permanent rules. The rules are necessary for implementation of the new statutes. The intent of the statutes and rules is to better protect clients of the regulated service providers from being harmed.

The new background check statutes and rules apply beginning October 1, 1998 to entities initially approved on or after that date, persons that entities hire or contract with on or after that date and nonclients who take up residence at an entity on or after that date. The statutes and rules apply beginning October 1, 1999 to entities initially approved prior to October 1, 1998, persons that entities

hired or contracted with prior to October 1, 1998 and nonclients who lived at an entity prior to October 1, 1998.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999

EMERGENCY RULES NOW IN EFFECT

Health and Family Services
(Community Services, Chs. 30––)

Rule was adopted amending **s. HFS 94.24 (2)(e)**, relating to searches of rooms and personal belongings of patients at the Wisconsin Resources Center.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules included in this order is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department operates the Wisconsin Resource Center near Oshkosh, a mental health treatment facility for two groups of people: (1) inmates of correctional institutions whose behavior presents a serious problem to themselves or others in state correctional facilities and whose mental health treatment needs can be met at the Center, and (2) persons who have been found by a court or jury under s. 980.05, Stats., to be sexually violent persons and who have therefore been committed to the custody of the Department under s. 980.06, Stats., for control, care and treatment, whose commitment order specifies institutional care and who have been placed by the Department at the Center under s. 980.065, Stats. About 60% of the 370 patients at the Center are inmates of correctional institutions and about 40% are persons committed to the Department under ch. 980, Stats.

The security, discipline, care and treatment of inmates of correctional institutions at the Wisconsin Resource Center are governed by administrative rules of the Wisconsin Department of Corrections. Chapter HFS 94, the Department's rules relating to the rights of patients receiving treatment for a mental illness, a developmental disability, alcohol abuse or other drug abuse, applies to the inmates of correctional institutions at the Center only in relation to patient rights specified in s. 51.61 (1) (a), (d), (f), (g), (h), (j) and (k), Stats. However, the entire ch. HFS 94 applies to patients at the Center who are there under a ch. 980, Stats., commitment.

At the Wisconsin Resource Center staff until recently have been making random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats. A patient has challenged the practice in a lawsuit, claiming that it violates s. HFS 94.24 (2) (e) which permits a search only when there is documented reason to believe that security rules have been violated, unless the search is of rooms and belongings in a forensic unit. Patients at the Center who are there under ch. 980, Stats., commitments are not residents of a forensic unit; a commitment under ch. 980, Stats., is considered a civil commitment. The court handling the case is expected to rule in favor of the patient. Therefore, the Center has temporarily suspended random searches, pending amendment of the rule.

This order amends s. HFS 94.24 (2) (e) to permit searches of the rooms and personal belongings of not only inpatients of forensic units but also inpatients of a secure mental health unit or facility under s. 980.065, Stats., and similar inpatients of the maximum security facility at the Mendota mental health institute, and not only when there is documented reason to believe that security rules have been violated but under other circumstances as well as specified in written facility policies. This change will permit the Wisconsin Resource Center to resume random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats.

This rule change is being promulgated on the advice of counsel by emergency order because of the length of the permanent rulemaking process and because random searches of the rooms and belongings of ch. 980, Stats., patients at the Wisconsin Resource Center need to be resumed without delay to protect other patients and staff and, in the long run, the general public.

These patients have been committed or are being detained because there is probable cause to to believe they are dangerous individuals who are disposed to commit future acts of sexual violence. Many have documented histories of other types of criminal activity, including fraud, theft and physical assault. Many also have a history of drug/alcohol dependence and gang activity. The intent of ch. 980, Stats., is to protect the public and provide treatment to this patient population. The major difference between this population and other patient populations is this population has a significantly higher percentage of individuals diagnosed with anti–social personality disorders and, as such, they have consistently shown deliberate disregard for the rights of others and a willingness to break the law.

The Wisconsin Resource Center is responsible for maintaining a therapeutic and safe environment for its patients. Yet the ch. 980 patients in general have consistently found 'creative' ways to break facility rules. Therefore, unless there are effective mechanisms, such as random searches, in place to monitor their activity, these patients will use their rights to continue their criminal activity and to violate the rights of others.

Random searches help the Center identify and prevent numerous violations of facility rules that are safety and security related or countertherapeutic to the patients. These searches can also deter patients from harboring dangerous items in their rooms. These could go undetected and be at some point used in harming another person or hinder or block the individual's treatment. They include weapons, drugs, indications of planning underway to rape or assault another patient or a staff member, sexually explicit material which may interfere with treatment progress, and stolen property including credit cards.

A facility cannot effectively treat these patients without the ability to effectively monitor and confront crimogenic behaviors and patterns. Random searches are a very effective treatment tool in this respect. They also reduce the likelihood of false positives for releasing or discharging a patient when evaluating for continued pertinence of the commitment criteria.

Publication Date: August 15, 1998
Effective Date: August 15, 1998
Expiration Date: January 11, 1999

EMERGENCY RULES NOW IN EFFECT (4)

Health and Family Services
(Health, Chs. HSS/HFS 110––)

1. Rules adopted revising **s. HFS 196.03 (22)**, relating to an exemption from regulation as a restaurant.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The current Budget Act, 1997 Wisconsin Act 27, effective October 14, 1997, created s. 254.61 (5) (g), Stats., to exempt a concession stand at a "locally sponsored sporting event" from being regulated under ch. HFS 196 as a restaurant. Following enactment of the State Budget, the Department received several inquiries from its own region–based inspectors and local health departments

serving as the Department's agents for enforcement of the Department's environmental sanitation rules, including rules for restaurants, about the meaning of "locally sponsored sporting event." What did the term cover? Did it cover food stands at facilities of locally–owned sports franchises? Were these now to be exempt from regulation under the restaurant rules?

This rulemaking order adds the new exemption to the Department's rules for restaurants and, in this connection, defines both "locally sponsored sporting event" and "concession stand." The order makes clear that the exemption refers only to concession stands at sporting events for youth, that is, for persons under 18 years of age. That interpretation is supported by the statutory phrase, "such as a little league game," that follows the term, "locally sponsored sporting event," in s. 254.61 (5) (g), Stats. The order further narrows the applicability of the exemption by building into the definitions the Department's understanding of who organizes or sponsors an exempt sporting event and on whose behalf a concession stand at the event is operated.

Although the Department's understanding of what "locally sponsored sporting event" should be taken to mean has been communicated to its field–based inspectors and agent local health departments, this is no more than an interpretive guideline, lacking the force of law, until the Department has set out that understanding in its rules for restaurants. Because the process for making the permanent rule change will take several months, the Department is publishing the rule change now by emergency order in the interests of protecting the public's health. The emergency rule order will ensure that, pending promulgation of the permanent rule change, there will be uniform statewide enforcement of the statute change that will prevent any local inspector from exempting from regulation food stands at locally sponsored sporting events for adults.

Publication Date: **March 14, 1998**
Effective Date: **March 14, 1998**
Expiration Date: **August, 11, 1998**
Hearing Date: **May 11, 1998**
Extension Through: **November 30, 1998**

2. Rules adopted revising **ch. HFS 119**, relating to the Health Insurance Risk–Sharing Plan.

Finding of Emergency

The Legislature in s. 9123 (4) of 1997 Wis. Act 27 permitted the Department to promulgate any rules that the Department is authorized or required to promulgate under ch. 149, Stats., as affected by Act 27, by using emergency rulemaking procedures except that the Department was specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state.

HIRSP provides a major medical type of coverage for persons not eligible for Medicare (Plan 1) and a Medicare supplemental type of coverage for persons eligible for Medicare (Plan 2). Plan 1 has a $1,000 deductible. Plan 2 has a $500 deductible. On December 31, 1997 there were 7,318 HIRSP policies in effect, 83 % of them Plan 1 policies and 17% Plan 2 policies. HIRSP provides for a 20% coinsurance contribution by plan participants up to an annual out–of–pocket maximum of $2,000 (which includes the $1,000 deductible) per individual and $4,000 per family for major medical and $500 per individual for Medicare supplement. There is a lifetime limit of $1,000,000 per covered individual that HIRSP will pay for all illnesses.

There is provision under HIRSP for graduated premiums and reduced deductibles. Plan participants may be eligible for graduated premiums and reduced deductibles if their household income for the prior calendar year, based on standards for computation of the Wisconsin Homestead Credit, was less than $20,000.

The current Budget Act, 1997 Wis. Act 27, transferred responsibility for the Health Insurance Risk–Sharing Plan (HIRSP) from the Office of Commissioner of Insurance to the Department of Health and Family Services effective January 1, 1998. The transfer included the administrative rules that the Office of Commissioner of Insurance had promulgated for the administration of HIRSP. These were numbered ch. Ins 18, Wis. Adm. Code. The Department arranged for the rules to be renumbered ch. HFS 119, Wis. Adm. Code, effective April 1, 1998, and, at the same time, because the program statutes had been renumbered by Act 27, for statutory references in ch. HFS 119 to be changed from subch. II of ch. 619, Stats., to ch. 149, Stats.

Act 27 made several other changes in the operation of the Health Insurance RiskSharing Plan. The Department through this rulemaking order is amending ch. HFS 119 by repeal and re–creation mainly to make the related changes to the rules, but also to update annual premiums for HIRSP participants in accordance with authority set out in s. 149.143 (3)(a), Stats., under which the Department may increase premium rates during a plan year for the remainder of the plan year.

Major changes made in the rules to reflect changes made by Act 27 in the HIRSP program statute are the following:

–Transfer of plan administration responsibility from an "administering carrier" selected by the Board of Governors through a competitive negotiation process to Electronic Data Systems (EDS), the Department's fiscal agent for the Medical Assistance Program, called in the revised statute the "plan administrator";

–Deletion of a physician certification requirement in connection with applications of some persons for coverage;

–Addition of alternatives to when eligibility may begin, namely, 60 days after a complete application is received, if requested by the applicant, or on the date of termination of Medical Assistance coverage;

–Addition of a reference to how creditable coverage is aggregated, in relation to eligibility determination;

–Modification of the respective roles of the state agency, now the Department, and the Board of Governors;

–Clarification that the alternative plan for Medicare recipients reduces the benefits payable by the amounts paid by Medicare;

–Modification of cost containment provisions to add that for coverage services must be medically necessary, appropriate and cost–effective as determined by the plan administrator, and that HIRSP is permitted to use common and current methods employed by managed care programs and the Medical Assistance program to contain costs, such as prior authorization;

–Continuation of an alternative plan of health insurance that has a $2500 deductible (this was added by emergency order effective January 1, 1998);

–Addition of timelines to the grievance procedure for plan applicants and participants, and a provision to permit the Department Secretary to change a decision of the Board's Grievance Committee if in the best interests of the State; and

–Establishment of total insurer assessments and the total provider payment rate for the period July 1, 1998 to December 31, 1998.

Publication Date: **July 1, 1998**
Effective Date: **July 1, 1998**
Expiration Date: **November 28, 1998**
Hearing Date: **September 29, 1998**

3. Rules adopted revising **ch. HFS 163**, relating to certification for the identification, removal and reduction of lead–based paint hazards.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, the brain in particular and to the reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead–based paint. When lead–based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards or reduce them, it is imperative that persons who provide these services be properly trained to safely and accurately perform lead–based paint activities.

The Department is authorized under s. 254.176, Stats., to establish by rule certification requirements for persons who perform or supervise lead–based paint activities, including lead hazard reduction or lead management activities. Under s. 254.178, Stats., any training course that is represented as qualifying persons for certification must be accredited by the Department and the instructors approved by the Department. Subject to review by a technical advisory committee under s. 254.174, Stats., the Department is authorized under s. 254.167, Stats., to establish procedures for conducting lead inspections and, under s. 254.172, Stats., to promulgate rules governing lead hazard reduction.

The Department's rules for certification to perform lead–based paint activities and for accreditation of training courses are in ch. HFS 163, Wis. Adm. Code. Chapter HFS 163 was promulgated by emergency order in July 1993 to establish certification requirements, including training, for lead abatement workers and lead supervisors, accreditation requirements for the corresponding training courses and criteria for approval of instructors.

The Department amended ch. HFS 163 effective February 18, 1997, by an emergency order. The emergency order added the certification disciplines of lead inspector, lead project designer and lead risk assessor for persons engaged in lead management activities and added accreditation requirements for the corresponding training courses. In addition, the order added certification fees for the new disciplines and course accreditation application fees.

Several years ago, Congress authorized the U.S. Environmental Protection Agency (EPA) to promulgate regulations that establish minimum certification and work practice standards for lead–based paint professionals, minimum accreditation standards for the courses that prepare persons for certification and minimum standards for approving state and tribal lead certification and accreditation programs. EPA published these regulations in the August 29, 1996, Federal Register as 40 CFR 745, Subparts L and Q.

If a state or Indian tribe fails to request and receive EPA approval for its program by August 30, 1998, EPA is charged with operating a lead training and certification program for that state or tribe. This means that individuals currently certified by, and training courses currently accredited by, the Department of Health and Family Services would also have to apply to EPA and comply with all EPA regulations.

Failure to obtain EPA authorization may negatively affect U.S. Department of Housing and Urban Development (HUD) or EPA grants to local public health agencies for lead hazard reduction and lead poisoning prevention activities and funding for home loans, weatherization loans and other housing assistance. Lack of federal funding may limit the ability of citizens to purchase homes, weatherize homes, or reduce lead–based paint hazards in homes.

In addition, the State lead training and certification program operates primarily on funding from EPA grants. EPA lead grant funding for FFY 99 is dependent on having an approvable program. Without adequate funding, the lead training and certification program be unable to maintain the current high level of responsiveness to complaints about lead hazards and requests for assistance.

Inspections or risk assessments conducted under the real estate disclosure regulations must be conducted by qualified lead professionals. Failure to achieve EPA authorization of the State's lead training and certification program may result in a lack of qualified lead professionals.

Under EPA authorization, states are able to diverge from EPA regulations as long as the alternative is as protective of human health and the environment as the EPA regulations. This flexibility would allow the State lead training and certification program to be more responsive to State needs, which may be different from the needs of the eastern states, the needs of which were reflected in the federal regulations.

Before the Department can receive EPA approval of its lead training and certification program, changes to the current State lead certification and accreditation program must be made. These necessary changes are the basis for this emergency order and include the following major revisions to the current rules:

Certification

- Adds certification requirements for lead companies in addition to individuals.
- Changes the current optional certification examination to a mandatory certification examination for supervisors, inspectors and risk assessors.
- Adds a limited term certification called "interim certification" for individuals waiting to take the certification exam.
- Provides for a maximum 3–year certification period from the completion date of the most recent training course instead of a one–year or 2–year period from the date certification is issued.
- Revises how worker–safety training is received by requiring that worker–safety training be completed as a prerequisite to lead training rather than be required as part of a lead training course.
- Reduces the required frequency of refresher training from every 2 years to every 3 years.
- Adds work practice standards for lead–based paint activities.

Accreditation

- Adds a mandatory hands–on skills assessment for hands–on activities.
- Adds a requirement for work practice standards to be incorporated into training.
- Revises topics and reduces hours for worker and supervisor courses, designed as prerequisite worker–safety training, followed by a 16–hour worker course, with an additional 16–hour supervisor course to follow when supervisor certification is desired.
- Adds a requirement for renewal of accreditation, with accreditation issued for a maximum of 4 years, in place of the current no–expiration accreditation.

Enforcement and oversight

- Expands details on potential enforcement actions in response to EPA's requirement for flexible and effective enforcement actions.
- Adds a requirement for reporting information about lead management activities to the Department to allow the Department to conduct targeted enforcement.

In addition to the changes specifically required by EPA before the State may apply to EPA for approval of its program, the revised rules establish a new discipline called worker–homeowner to meet the needs of homeowners who EPA requires be certified in order to conduct abatement in their own homes when a child has an elevated blood lead level. This special certification category allows the Department to establish minimum training and work practice

requirements that will encourage more homeowners with lead poisoned children to permanently abate the lead hazards in their homes than is likely to occur when certified companies must be hired.

Public comment was sought in the development of the rule revisions. On September 5, 1997, the Department published notice in the Wisconsin State Journal of its intent to seek EPA authorization. The notice outlined the major changes needed to bring the state program into compliance with EPA approval criteria. In addition the public was invited to submit comments or request a hearing. No comments were received in response to this notice.

The work practice standards under s. HFS 163.14 were reviewed and approved by a technical advisory committee appointed by the Department in accordance with ss. 254.167, 254.172 and 254.174, Stats.

Publication Date: **August 29, 1998**
Effective Date: **August 29, 1998**
Expiration Date: **January 25, 1999**

4. Rules adopted revising **ch. HFS 124,** relating to designation of critical access hospitals.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Competitive market forces and the spread of managed care networks and plans during the last few years have adversely affected health care services availability in some rural areas of Wisconsin. In particular, greatly reduced inpatient care at hospitals in rural areas is making it increasingly more difficult for the hospitals to survive. Most of the rural hospitals in a precarious financial condition are located in the western and northern parts of the state. Many serve areas with health care professional shortages. Some of the locations are popular tourist destinations.

These changes to the Department's rules for hospitals will enable eligible hospitals in rural Wisconsin to become limited service medical facilities called "critical access" hospitals and thereby reduce their costs but still be certified to receive Medicare and Medicaid funding for care provided to Medicare and Medicaid recipients.

The critical access hospital is defined under changes made to the federal Social Security Act by P.L. 105–33, the Balanced Budget Act of 1997, and conforming changes to ch. 50, Wis. Stats., made by the 1997 Wisconsin Act 237. A critical access hospital must be a nonprofit or public facility that is located in a rural area, usually more than a 35–mile drive from another hospital or is certified by the State as being a necessary provider of health care services to residents in the area. This type of hospital must make available 24–hour emergency care services; provide inpatient care for a patient for a period not to exceed 96 hours; and can have inpatient services provided by registered nurses with advanced qualifications, with physician oversight but without the physician being present in the facility. A critical access hospital must have nursing services available on a 24–hour basis, but need not otherwise staff the facility when no patients are present, and it may have auxiliary services, such as laboratory work, provided on a part–time, off–site basis.

Many of the features of a critical access hospital represent departures from what has been understood as a hospital under both federal law (for purposes of Medicare and Medicaid hospital provider certification) and state law (for purposes of hospital approval). The recent federal statute and state statute changes have re–defined "hospital" to accommodate critical access hospitals. Under the new federal Medicare Rural Hospital Flexibility Program, 42 USC 1395i – 4, criteria are specified by which a state designates a hospital as a critical access hospital and by which the Secretary of the federal Department of Health and Human Services approves a facility as a critical access hospital.

This rulemaking order amends ch. HFS 124, relating to hospitals, to accommodate critical access hospitals. The order amends the definition of "hospital" to make it like the amended statutory definition; specifies eligibility criteria for the Department's designation of a facility as a critical access hospital, and a process for applying for designation; and requires a critical access hospital to be operated in compliance with all provisions of ch. HFS 124, but with exceptions that relate to limits on the number of acute care and swing beds, limits and exceptions on acute inpatient stays, staffing in the absence of inpatients, health care professional staff who provide inpatient care, permission to obtain specified auxiliary services on a part–time and off–site basis and a requirement for a written agreement with one or more full–time general hospitals covering referrals of patients from the critical access hospital and other matters.

Thirty–three rural hospitals in the state with low annual inpatient days have been identified as potential applicants for critical access hospital status. From 3 to 8 of these are now actively considering closing altogether or changing their health care delivery focus. They must decide soon about maintaining their levels of operation. The need to preserve some type of hospital service is critical for people in these small towns and their surrounding areas.

Once a rural hospital closes it can no longer acquire federal critical access hospital status. Changes to ch. HFS 124 are necessary so that the Department can designate a rural hospital as a critical access hospital. The rule changes are being made by emergency order to prevent the imminent closing of several rural hospitals and the consequent loss of readily accessible hospital services for people in the rural areas served by those hospitals.

Publication Date: **September 12, 1998**
Effective Date: **September 12, 1998**
Expiration Date: **February 9, 1999**
Hearing Date: **October 13, 1998**

EMERGENCY RULES NOW IN EFFECT (5)

Natural Resources
(Fish, Game, etc., Chs. NR 1––)

1. A rule was adopted revising **s. NR 45.10 (3)** and **(4)**, relating to reservations on state parks, forests and other public lands and waters under the Department's jurisdiction.

Exemption From Finding of Emergency

1997 Wis. Act 27, section 9137 (1) authorizes the department to promulgate these rules without a finding of emergency under s. 227.24, Stats.

Summary of Rules:

1. Creates a process for accepting telephone reservations for department camp sites.

2. Establishes time frame for making reservations.

Publication Date: **December 15, 1997**
Effective Date: **April 1, 1998**
Expiration Date: **April 1, 1999**
Hearing Date: **January 12, 1998**

2. Rules adopted revising **chs. NR 10 and 11,** relating to deer hunting in Deer Management Unit 67A.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Deer are causing significant crop damage concerns in this

Unit. It is highly unlikely that the regular 1998 gun deer seasons will achieve the prescribed harvest of antlerless deer.

Publication Date: June 24, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999

3. Rules were adopted revising **ch. NR 19,** relating to wildlife damage abatement and claims program.

Exemption From Finding of Emergency

Pursuant to s. 9137(11s)(b), 1997,Wis. Act 27 the department is not required to make a finding of emergency for this rule promulgated under s. 227.24, Stats.

Publication Date: July 1, 1998
Effective Date: July 1, 1998
Expiration Date: November 28, 1998

4. Rules adopted revising **s. NR 20.03 (1)(k),** relating to sport fishing for yellow perch in Sauk Creek, Ozaukee County.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

The yellow perch population in Lake Michigan is in a state of decline. Harvests of yellow perch must be limited immediately in order to maximize the probability of good reproduction in the future. Lake Michigan yellow perch are attracted by the electric power plant thermal discharge into Sauk creek, an Ozaukee county tributary of Lake Michigan. The sport fishing harvest limits proposed here remove an opportunity for high sport harvests of yellow perch at one location where current regulations do not afford adequate protection for yellow perch. Accordingly, it is necessary to restrict the harvest of yellow perch from Sauk creek by establishing an open season and daily bag limit that coincide with Lake Michigan's.

Publication Date: June 27, 1998
Effective Date: June 27, 1998
Expiration Date: November 24, 1998
Hearing Date: July 24, 1998

5. Rules adopted revising **s. NR 10.01 (1),** relating to the 1998 migratory game bird season.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule—making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid−August of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rulemaking procedures will not allow the establishment of these changes by September 1. Failure to modi. our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: September 15, 1998
Effective Date: September 15, 1998
Expiration Date: February 12, 1999
Hearing Date: October 15, 1998

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Environmental Protection−Remediation, Chs. NR 700−)

Rules adopted creating **ch. NR 749**, relating to the assessment and collection of fees for providing assistance regarding the remediation and redevelopment of contaminated lands.

The Department of Natural Resources finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is that in order for the Department to facilitate the cleanup and redevelopment of many contaminated sites that could adversely affect public health, safety or welfare, fee revenue must be generated immediately in order to timely fill the program revenue positions which were authorized in the recent budget bill.

Finding of Emergency

Publication Date: September 19, 1998
Effective Date: September 19, 1998
Expiration Date: February 16, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Public Instruction

1. Rules adopted revising **ch. PI 35,** relating to the Milwaukee parental school choice program.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation fo the public welfare. A statement of the facts constituting the emergency is:

On June 10, 1998, the Wisconsin Supreme Court found constitutional the revisions made to the Milwaukee parental choice program under 1995 Wis. Act 27.

Since the provisions under the Act (including allowing the participation of religious schools) are to be implemented during the 1998−99 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and financial audit requirements required of the participating private schools as providing for under the Act. The requirements established under this rule were discussed with the private schools participating under the program during the 1996−97 school year. The schools indicated an acceptance of these provisions.

These emergency rules will be promulgated as proposed permanent rules.

Publication Date: August 5, 1998
Effective Date: August 5, 1998
Expiration Date: January 1, 1999
Hearing Date: October 13, 1998

2. Rules adopted creating **ch. PI 38**, relating to grants for peer review and mentoring.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Under s. 115.405 (2), Stats., the state superintendent shall allocate $500,000 annually, for one−year grants that allow a participant CESA, consortium of school districts, or a combination thereof to provide assistance and training for teachers who are licensed or have been issued a permit under ss. 115.28 (7) and 115.192, Stats., to implement peer review and mentoring programs.

The grant award period begins the 1998−99 school year. since the timelines would be too stringent to implement this grant program by September 1, 1998, the department is requiring applications to be submitted by November 1, 1998. The grant award period will be from December 1, 1998 to June 30, 1999. In order for applicants to develop proposals and for the state superintendent to review the proposals and make grant awards in time for the upcoming school year, rules must be in place as soon as possible.

Publication Date: **August 15, 1998**
Effective Date: **August 15, 1998**
Expiration Date: **January 11, 1999**
Hearing Date: **October 20,1998**

EMERGENCY RULES NOW IN EFFECT

Public Service Commission

Rules were adopted amending **s. PSC 4.30 (4) (a)** and **(5) (a)** and **(b)**, relating to the preparation of draft environmental impact statements for electric generating plant projects that must be reviewed in 90 days.

Finding of Emergency

The Commission's review of CPCN applications from the winning bidders under 1997 Wis. Act 204, Section 96 (1), will commence when completed applications are filed. This is likely to occur on or before August 31, 1998, at which point state law grants the Commission only 90 days to finish its review of the project applications. Permanent rules cannot be adopted in time to affect the Commission's review period. Preservation of the public peace, health, safety or welfare necessitate putting this rule into effect immediately, so that the Commission can complete its review process in a timely manner.

Publication Date: **July 17, 1998**
Effective Date: **July 17, 1998**
Expiration Date: **December 14, 1998**

EMERGENCY RULES NOW IN EFFECT

Revenue

Rules adopted amending **s. Tax 2.39** and creating **s. Tax 2.395**, relating to the use of an alternative apportionment method.

Finding of Emergency

The Department of Revenue finds that an emergency exists and that a rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Section 2r of 1997 Wis. Act 299 requires that the Department of Revenue prepare administrative rules specifying the procedure for a corporation to request the use of an alternative apportionment methods, the circumstances under which the department may grant such a request and the alternative methods that the department may authorize under s. 71.25 (14), Stats. The allowance of an alternative apportionment method takes effect for taxable years beginning on January 1, 1998. Corporations must request the use of an alternative methods of apportionment on or before January 1, 2000.

Publication Date: **September 29, 1998**
Effective Date: **September 29, 1998**
Expiration Date: **February 26, 1999**

EMERGENCY RULES NOW IN EFFECT

Transportation

Rules adopted revising **ch. Trans 328,** relating to motor carrier safety requirements for intrastate transportation of hazardous materials.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is that new federal hazardous material rules include intrastate transportation. Within the revised rules are exceptions allowed for farm operations, the use of certain nonspecification packages and permanently mounted nonspecification nonbulk metal tanks used to transport flammable liquids in intrastate commerce. The exceptions will only apply if state statutes or regulations are in effect prior to October 1, 1998 allowing those exceptions. Failure to implement the allowed exceptions would have a negative impact on the state agricultural community as well as other businesses who would benefit from them.

Publication Date: **September 15, 1998**
Effective Date: **September 15, 1998**
Expiration Date: **February 12, 1999**
Hearing Date: **October 5, 1998**

EMERGENCY RULES NOW IN EFFECT

Veterans Affairs

Rules adopted amending **s. VA 2.01 (2) (b)2.**, relating to the expenditure limitation for dentures under the health care aid grant program.

Finding of Emergency

The Department of Veterans Affairs finds that an emergency exists and that a rule is necessary for the immediate perseveration of the public peace, health, safety or welfare. A statement of the facts considering the emergency is:

The Department provides payment to dental providers for dentures under the health care aid grant program for needy veterans and their dependents. Under s. VA 2.01 (2) (b) 2., Wis. Adm. Code., the Department is restricted to a $50,000 cap per fiscal year for the payment of claims for dentures. As the result of a significant increase in the use of the health care aid grant program for dentures, the Department has received requests for approval of treatment plans involving dentures which would result in expenditures in excess of the fiscal year cap. The Department was required to terminate denture coverage within the first two tweeks of the most recent fiscal year. A significant number of applications were returned to veterans who were thus unable to receive coverage for dentures.

The treatment plans submitted with the applications typically encompass the removal of teeth with a resulting need for dentures. Failure to provide dentures could have a negative impact upon an individual's health. It is necessary that the Department has sufficient

expenditure authority to meet the significant demand for this health care benefit. The emergency rule cap will accomplish this goal.

Publication Date: October 12, 1998
Effective Date: October 12, 1998
Expiration Date: March 11, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Workforce Development
(Economic Support, Chs. DWD 11–59)

1. Rules adopted renumbering **ss. HFS 55.55 to 55.62** and revising **ch. DWD 55**, relating to background checks for persons involved with certified day care.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Beginning on October 1, 1998, recently enacted provision in ch. 48, Stats., require the completion of background reviews on caregivers and others who come into contact with clients in the programs operated by caregivers. Although most of these provisions are administered by the Department of Health and Family Services, they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review requirements in relation to certified day care programs as they become effective.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999

2. Rules adopted renumbering **chs. HSS 80 to 82** as **chs. DWD 40 to 42,** and creating **ch. DWD 43,** relating to child support administrative enforcement.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

State and federal legislation have created new procedures for the administrative enforcement of child support obligations. To place the new procedures into effect, the Department of Workforce Development has scheduled public hearings on a proposed permanent rule during the month of October, 1998. While the permanent rulemaking process proceeds, DWD is adopting the provisions in the current draft as an emergency rule so that county child support agencies will be able to utilize the new statutory enforcement and collection procedures for the benefit of custodial parents as soon as possible.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999

STATEMENTS OF SCOPE OF PROPOSED RULES

Agriculture, Trade and Consumer Protection

Subject:

Ch. ATCP 160 – Relating to premium lists and premium requirements for county and district fairs.

Description of policy issues:

Preliminary objectives:

Update rules related to county and district fairs to conform to current recommendations of the Wisconsin Association of Fairs (WAF). The proposed rule will establish new, restructured, and revised entry classes for fair exhibits and specify uniform premium awards for various entry classes. Objectives of the revisions include:

■ Revising entry classes for county and district fairs to reflect recent changes in state youth programs and exhibition requirements in other divisions.

■ Updating uniform premium awards.

■ Reviewing the organization of the rule and exhibition classes and so that necessary revisions can be made which may make it easier for exhibitors to understand and fair boards to administer.

Preliminary policy analysis:

Under s. 93.23 (1) (a) 2., Stats., "…the department may prescribe uniform premium lists setting forth classes of exhibits which will be approved for the purposes of state aid, premium awards in such classes and entry qualification, fees and charges for exhibitors…."

The Department has updated its administrative rules for county and district fair exhibits every 5 years based on recommendations from WAF. The association is comprised of organizations that sponsor county and district fairs in this state. WAF requested the rule be reviewed by a committee of the association to see if any changes were needed and, if so, have the new rule in place for the year 2000 county and district fair season. The proposed rule revisions will be adopted as part of the Department's regular 5–year cycle for exhibition requirements and premium lists for county and district fairs and will incorporate the most recent recommendations of WAF.

Policy alternatives:

No change. If the Department does not change ch. ATCP 160, the current rules for county and district fairs will remain in effect in their current form. Outdated rules may cause some restrictions on exhibits and exhibitors at fairs. Fair officials may also have difficulty in interpretation and administration of the rules at their respective fairs.

Statutory authority:

The Department proposes to revise and modify ch. ATCP 160 under authority of ss. 93.07 and 93.23, Stats.

Staff time required:

The Department estimates that it will use approximately 0.4 FTE (Full–Time Equivalent) staff time to modify this rule. This includes research, drafting, preparing related documents, coordinating advisory committee discussion, holding public hearing and communicating with affected persona and groups. The Department will use existing staff to develop this rule.

Funeral Directors Examining Board

Subject:

S. FD 6.10 – Relating to the solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy.

Description of policy issues:

Objective of the rule:

Repeal s. FD 6.10 (5), which includes the sunset date of January 1, 2000, which is the date on or after which a funeral director, owner of a funeral establishment or an agent may no longer initiate any telephone calls for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy. Clarify the provisions in s. FD 6.10 (1) to (4).

Policy analysis:

The current rule permits a funeral director, owner of a funeral establishment or an agent to initiate telephone calls for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy under certain very specific conditions which are enumerated in s. FD 6.10; however, the current rule states that on or after January 1, 2000, all such solicitations must cease, unless the Board amends the rule.

The new policies that will probably be proposed are to indefinitely permit a funeral director, owner of a funeral establishment or an agent to initiate a telephone call by live–voice for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy, but only to those locations and only under the limitations already stated in the current rules. All calls by the use of an automatic telephone dialing system or an artificial prerecorded voice will probably be prohibited.

Statutory authority for the rule:

Sections 15.08 (5) (b), 227.11 (2) and 445.125 (3m) (b) 2. b. and (j) 1. and 2., Stats.

Estimate of the amount of state employe time and any other resources that will be necessary to develop the rule:

100 hours.

Natural Resources (Environmental Protection––Water Supply, Chs. NR 800––)

Subject:

Ch. NR 809 – Relating to safe drinking water systems.

Description of policy issues:

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

The 1996 Amendments to the federal Safe Drinking Water Act mandates a number of initiatives which affect states and public water systems. This rule package incorporates several EPA regulations which will be promulgated as final rules through December 31, 1998. In addition there are two revisions related to sample collection and certified laboratory reporting. Following is a brief synopsis of the proposed changes:

Consumer Confidence Reports – This regulation enhances public health protection and the public right–to–know about local environmental information by requiring public water suppliers to put annual drinking water quality reports into the hands of their customers. These reports will enable water consumers to make practical, knowledgeable decisions about their health and their environment. Each report will include information about the source of drinking water, summary of susceptibility of the source to contamination, level of any contaminants in the drinking water, the health based standard for contaminants, potential health effects of any contaminants and phone numbers for additional information. States are required to implement and oversee this program.

Public Water System Definition – The 1996 Amendments expand the definition of a public water system to include "other constructed conveyances", such as irrigation canals which are used to provide drinking water. These types of systems are not typically found in Wisconsin.

Variance and Exemption Regulations – These regulations revise existing language dealing with procedures and conditions under which states may issue variances and exemptions. Regulatory relief provisions and available treatment technologies, particularly for small systems serving <10,000 persons, are included.

Update Analytical Methods – These changes withdraw approval of 14 older EPA methods and incorporate 6 American Society of Testing and Materials and 23 Standard Method revised methods. Eleven microbiological and one turbidity method are revised to improve clarity and ease of use.

Lead/Copper Rule Revisions – These are minor revisions to the existing rule to modify optimum corrosion control requirements which will provide water systems with greater flexibility.

Disinfection/Disinfection Byproducts – This new regulation will control the chemical disinfectants used in public water systems and establish maximum contaminant levels for byproduct chemicals formed when disinfectants react with contaminants in the source water. Stage 1 of the rule will be promulgated late in 1998 and further reductions in byproducts will be promulgated as Stage 2 in 2002.

Interim Enhanced Surface Water Treatment Rule – This rule regulates finished water from surface water treatment plants. Controls will be established for operational parameters, such as turbidity and individual filter monitoring. The final rule which will provide control for *Cryptosporidium* will be promulgated in 2000.

Sample Tampering Prohibition – Establish a requirement that water samples collected from public water systems must be representative of normal operating conditions and cannot be tampered with before or after drawing the sample.

Certified Laboratory Reporting – Establish minimum reporting requirements for Safe Drinking Water Certified Laboratories to provide analytical results to the Department.

These rules will affect various groups of public water systems. Because the federal regulation proposals have had considerable public debate, no unusual public interest is anticipated.

This action does not represent a change from past policy.

Statutory authority for the rule:

SS. 280.11, 281.11, 281.12 (1) and 281.17 (8), Stats., and 42 USC s. 300f and 300g.

Anticipated time commitment:

The anticipated time commitment is 209 hours. Two public hearings are proposed to be held in August, 1999 at Madison and Stevens Point.

Nursing Board

Subject:

S. N 8.05 – Relating to continuing education requirements for advanced practice nurse prescribers.

Description of policy issues:

Objective of the rule:

Section N 8.05 (1) requires advanced practice nurse prescribers to complete at least eight contact hours per year of continuing education in clinical pharmacology /therapeutics, but does not define the term "contact hour." The Board proposes to obviate confusion that has arisen in that regard by creating a definition.

Evidence of continuing education completed by advanced practice nurse prescribers must be submitted by licensees on a schedule consistent with the schedule for submission of such evidence to the nurses' national certifying bodies. Because of variations both as to frequency and date of filing with the national certifying bodies, there has been confusion among licensees as to how long evidence of continuing education must be retained. The Board proposes creation of a rule which would establish a uniform minimum retention time of five years.

Statutory authority:

SS. 15.08 (5) (b), 227.11 (2) and 441.16 (3) (d), Stats.

Estimate of the amount of state employe time and any other resources that will be necessary to develop the rule:

100 hours.

Pharmacy Examining Board

Subject:

S. Phar 7.01 – Relating to the role of employes in a pharmacy who are not pharmacists, and to delegation of duties by a pharmacist.

Description of policy issues:

Objective of the rule:

The objective of the rule is to clarify the authority and responsibilities of a pharmacist to delegate aspects of the practice of pharmacy to persons who are not licensed as pharmacists.

Policy analysis:

Rules of the Pharmacy Examining Board identify in s. Phar 7.01 that non–pharmacist employes may be assigned duties by a pharmacist relating to receiving prescriptions, preparing and dispensing drugs. The rules proposed will more specifically define the responsibilities of a pharmacist who delegates duties, and describe the types of duties related to compounding and delivering drugs that may be delegated.

Statutory authority:

SS. 15.08 (5) (b), 227.11 (2) and 450.11 (3), Stats.

Estimate of the amount of state employe time and any other resources that will be necessary to develop the rule:

80 hours.

Psychology Examining Board

Subject:

Chs. Psy 2 and 4 – Relating to licensure of persons licensed in other states, supervised psychological experience, approval of continuing education programs, audit of continuing education, disciplinary action in other states, and examination deadlines.

Description of policy issues:

Objective of the rule:

▶ Repealing and amending rules relating to licensure requirements so as to be consistent with the Board's participation in the agreement of reciprocity of the Association of State and Provincial Psychology Boards;

▶ Creating a rule to provide for licensure of applicants who have been granted the Certificate of Professional Qualification issued by the Association of State and Provincial Psychology Boards, or who qualify as senior psychologists;

▶ Amending rules relating to qualification of persons supervising psychological trainees to create minimum experience requirements and to provide that supervisors must be licensed as psychologists;

▶ Repealing and recreating the continuing education rules for purposes of simplification and the convenience of licensees, and to provide for audits of compliance with continuing education requirements by licensees;

▶ Creating a rule to define as unprofessional conduct adverse licensing action taken by another state; and

▶ Amending the rule establishing minimum lead time for admission to examinations.

Policy analysis:

The Board is currently attempting to facilitate licensure of persons licensed in other states by becoming signatory to the agreement of reciprocity of the Association of State and Provincial Psychology Boards. The Board proposes amendments to the licensure requirements at ss. Psy 2.09 and 2.12, designed to make the Board eligible to participate in the agreement without significantly changing the actual procedures followed by the Board in the licensure process. The Board also proposes creation of new provisions which would further facilitate licensure of those licensed in other states by recognizing the Certificate of Professional Qualification in Psychology issued by the Association of State and Provincial Examining Boards, and by recognizing those who qualify as "senior psychologists" in having been licensed in another state for more than 20 years without discipline.

The Board has become aware that the supervision of future candidates for a license who are engaged in meeting the supervised experience requirements at s. Psy 2.09 (3), is occasionally carried out by inexperienced persons who may not be qualified to carry out the required supervisory responsibilities. The Board proposes to create amendments to s. Psy 2.09 (3) (b), which would create such minimum qualifications, primarily by requiring that supervisors be licensed psychologists who have had at least three years of post−licensure professional experience.

The rules establishing the requirements for approval of continuing education at s. Psy 4.02, have evolved in a somewhat disorganized manner and are confusing to licensees and difficult for the Board to administer. The Board proposes repeal and recreation of s. Psy 4.02 (2), (3) and (4), designed to remedy that situation by clarifying and simplifying the approval process.

The Board requires that licensees at the time of biennial renewal of their licenses certify to having completed 40 hours of Board−approved continuing education. In auditing licensees under investigation for allegations of misconduct, the Board has found that a significant number of such licensees have not in fact completed required continuing education. The Board proposes to create a rule which would provide for random audit of ten percent of all licensees during each biennial licensing period.

The Board's current rules of conduct define as unprofessional conduct conviction of a crime the circumstances of which substantially relate to the practice of psychology, but do not define as unprofessional conduct adverse action by the psychology licensing board in another state. The Board proposes the creation of a new disciplinary rule which would remedy that situation.

Section Psy 2.02 (2), provides that applicants must complete their application before the first of the month prior to the month in which the examination is given. In some instances, this is insufficient time to complete the arrangements for admission to the examination. The Board would propose amending the rule to increase the time for processing examination applications to at least 30 days.

Statutory authority:

SS. 15.08 (5) (b), 227.11 (2), 455.045 (3), 455.065 and 455.08, Stats.

Estimate of the amount of state employe time and any other resources that will be necessary to develop the rule:

100 hours.

Revenue

Subject:

SS. Tax 2.39 and 2.395 – Relating to an alternative method of apportionment of income for Wisconsin corporation franchise and income tax purposes, as created by 1997 Wis. Act 299, effective for taxable years beginning on January 1, 1998.

Description of policy issues:

Objective of the proposed rule:

The objective of the rule order is to specify the procedure for a corporation to request the use of an alternative apportionment method, the circumstances under which the Department may grant such a request and the alternative methods that the Department may authorize under s. 71.25 (14), Stats.

Existing policies:

Since the use of an alternative apportionment method is a new provision, there are no existing policies.

Policy alternatives:

The Department is required by s. 2r of 1997 Wis. Act 299 to promulgate a rule relating to the use of an alternative apportionment method.

Statutory authority:

S. 71.80 (1) (c), Stats.

Estimate of staff time required:

The Department estimates it will take approximately 40 hours to develop this rule order. This includes drafting the rule order, review by appropriate parties, and preparing related documents. The Department will assign existing staff to develop this rule order.

Revenue

Subject:

S. Tax 11.14 – Relating to sales and use tax exemption certificates, and

S. Tax 11.53 – Relating to the sales and use tax treatment of temporary events.

Description of policy issues:

Objective of the proposed rule:

The objective of the rule order is to:

• Update s. Tax 11.14 to reflect law changes contained in 1997 Wis. Acts 27 and 237, relating to exemption certificate requirements for sales of certain commodities.

• Clarify various Department policies relating to exemption certificates.

• Reflect the Department's discontinuance of temporary seller's permits and concessionaire permits.

• Change Department policy to allow the use of a mobile seller's permit simultaneously at multiple locations.

• Clarify conditions under which permit violation provisions apply.

Existing policies:

The rule order reflects the Department of Revenue's existing policy of providing accurate information to taxpayers, practitioners, and Department employes.

New policies proposed:

The policy to allow the use of a mobile seller's permit simultaneously at multiple locations is new. The Department no longer issues multiple mobile seller's permits to the same registrant.

Policy alternatives:

◇ Do nothing. Section Tax 11.14 will be incorrect in that it does not reflect current law, the rules will not reflect or clearly state current Department policy, and s. Tax 11.53 will remain unclear with respect to permit violations.

Statutory authority:

S. 227.11 (2) (a), Stats.

Estimate of staff time required:

The Department estimates it will take approximately 40 hours to develop this rule order. This includes drafting the rule order, review by appropriate parties, and preparing related documents. The Department will assign existing staff to develop this rule order.

Transportation

Subject:

Chs. Trans 138 and 139 – Relating to regulating the conduct of motor vehicle dealers, salespeople, and other licensees in Wisconsin and to providing protection for consumers from unfair trade practices.

Description of policy issues:

Description of the objective of the proposed rulemaking:

Chs. Trans 138 and 139 regulate the conduct of motor vehicle dealers, salespeople, and other licensees in Wisconsin and provide protection for consumers from unfair trade practices. The purpose of this rulemaking is to amend these regulations to incorporate some new consumer protections and to consider the Wisconsin Automobile and Truck Dealers Association's (WATDA) and other industry requests for changes that are intended to facilitate commerce.

For each item below, a description of the proposed change, a description of policy alternatives and the analysis used to arrive at the chosen policy decision are described.

PROPOSED AMENDMENT 1

REGULATE SALES BY OUT–OF–STATE DEALERS

Description of objective of the amendment:

Amend current s. Trans 138.02 (10), definition of "sell" a motor vehicle, to include delivering a vehicle from a seller in another jurisdiction to a retail consumer in Wisconsin. The change would bring under dealer licensing authority those people who currently deliver vehicles to Wisconsin consumers for out–of–state sellers.

Description of existing policies relevant to the amendment:

Section Trans 138.025 (1) requires a dealer license for "any person engaging wholly or partly in the business of selling motor vehicles...."

Current policy allows out–of–state sellers to sell vehicles to Wisconsin consumers by phone, fax or the Internet without a dealer license as long as they do not have a business location in Wisconsin and the sale occurs outside of Wisconsin. The Department has determined that a sale occurs in Wisconsin when a consumer orders a vehicle from another state by mail, fax or Internet and the dealer delivers it to the consumer in Wisconsin. Developing technologies have led to out–of–state dealers delivering truckloads of cars to Wisconsin residents in this state without complying with Wisconsin unfair trade practice regulations. This rulemaking will clarify that these sellers are subject to regulation in this state.

Analysis of policy alternatives:

The proposed change would provide Wisconsin consumers with the same protections if they buy a vehicle at their local dealership or via their computer, if they take delivery in Wisconsin. This proposal would have no effect on interstate or internet purchases where the customer accepts delivery in another state. It would also put out–of–state dealers who deliver vehicles to Wisconsin consumers on a more even playing field with regulated Wisconsin dealers. One alternative would be to make no rule change, but instead rely on states to join in a voluntary resolution to assist in the enforcement of each others' dealer laws. Regulators from 20 states have already signed such a resolution. However, lightly regulated states that either do not participate in the resolution or lack laws similar to other participating states create loopholes where reciprocity can't occur.

Another alternative would be to require anyone delivering a vehicle from a dealer in another state to provide the consumer with disclosures explaining which state's laws regulate the sale and who to call for help with a complaint. Though this alternative would facilitate a consumer's recourse in the event of a dispute, it would do little to level competition between resident dealers and out–of–state dealers who are shipping cars into the state. This solution would also be hard to enforce against dealers over whom Wisconsin has no licensing authority.

Not implementing the proposed change would leave consumers who take delivery of vehicles in Wisconsin from out–of–state sellers via phone, fax or the Internet unprotected against unfair trade practices, and it would put Wisconsin dealerships at an unfair competitive disadvantage because out–of–state sellers could use unfair trade practices that Wisconsin dealerships are prohibited by law from using.

PROPOSED AMENDMENT 2

AUCTION SALES

Description of objective of the amendment:

Exempt from dealer licensing requirements those retail auctions that sell, at one time, heavy (over 16,000 lbs.) construction motor vehicles owned by several businesses, when those sales are incidental to the vehicle owners' primary business activities.

Description of existing policies relevant to the amendment:

Current policy exempts from dealer licensing those retail auctions that sell the vehicles of one individual or business at a time, or sell no more than three vehicles at a time. Large retail auctions of vehicles owned by several individuals or businesses are currently prohibited. However, businesses are currently allowed to sell any number of their privately titled vehicles at retail by any other means. The distinction allowing a business to sell or auction off its own fleet, but prohibiting more than one business from pooling vehicles for sale at a retail auction, exists to ensure that consumers know whose vehicles they are buying, which may provide information on how a vehicle was used.

Analysis of policy alternatives:

Ritchie Bros. International, Inc., a large retail auctioneer of road machinery and construction company fleets, which has moved its business into Wisconsin, has asked the Department to evaluate the possibility of expanding the current exemption from dealer licensing for certain retail auctioneers. The Department has evaluated the company's request and is considering a change which would make it easier for a business like Ritchie Bros. to operate in the state, and would expand other businesses' opportunities for conveniently disposing of their heavy construction vehicles. Because businesses can currently sell these vehicles without complying with dealer trade practice laws or inspecting or disclosing vehicle condition, these commercial purchasers would lose little protection by buying the same vehicle at an unregulated retail auction and might benefit from the convenience of a wider selection.

An alternative would be to allow auctions to sell vehicles at retail for any number of sellers of any type, including private individuals, without a dealer license. However, large unregulated auctions of private sellers' used vehicles would endanger retail consumers and put regulated dealerships at a competitive disadvantage. Dealers currently sell private sellers' vehicles with inspection and disclosure. This existing consumer protection would be lost if this alternative were adopted.

The auction companies suggest that not implementing any change would continue to put unnecessary regulatory burdens on private businesses wishing to dispose of vehicles they use for construction.

PROPOSED AMENDMENT 3

ELIMINATE 500–MILE LIMITATION ON OPERATION OF "NEW" VEHICLES

Description of objective of the amendment:

To change the definition of a "new" vehicle to allow any number of miles for manufacturer tests, pre–delivery test, dealer exchange or delivery, plus up to 200 miles for any other purpose (including the purchasing consumer's test drive).

Description of existing policies relevant to the rule:

Current regulations require a dealer to disclose a vehicle with more than 500 miles on it as a "used" vehicle. Those miles may be

accrued for any purpose. However, before a recent rule change, long−standing Department policy allowed vehicles to be sold as new which had accrued as many miles as necessary for manufacturer tests, pre−delivery dealer test, dealer exchange or delivery. The Department informally allowed an additional 200 miles for other dealership tests and the purchaser's test drive.

Analysis of policy alternatives:

The recent change to the definition of "new" vehicle was intended to make it easier for state investigators to determine if a new vehicle had reached the "used" vehicle threshold. However, the new definition has imposed serious unintended hardship on dealerships by requiring them to sell as "used" vehicles that have been driven more than 500 miles from the manufacturer to the point of sale. In particular, recreational vehicle dealers have been harmed since most of their vehicles are driven from the manufacturer, often from a long distance. The proposed amendment would allow dealers as many miles as necessary to move new vehicles to the consumer and to perform necessary tests to make sure new vehicles will perform as consumers expect.

One alternative would be to raise the 500 mile limit to 700 or a 1,000 miles that may be accrued for any purpose. However, that change could result in vehicles being used as demonstrators and sold as new, and the limit might still be too low for dealers with a legitimate need to drive a car from a distant dealership.

Another alternative would be to limit the effect of the rule on recreational vehicles. However, there are situations in which a car or truck also must travel more than 500 miles to the point of sale. The Department has evaluated WATDA's request for this rule change and proposes that the Department revert to its long standing definition for all vehicles, and allow unlimited mileage for vehicle delivery, and manufacturer and dealer tests.

The Department believes consumers benefit when vehicles are thoroughly tested before sale, and when consumers can order through their dealer a hard−to−get new model from a dealer in a distant state.

PROPOSED AMENDMENT 4

CHANGE MANNER OF PROVIDING USED VEHICLE DISCLOSURES FOR MOTORCYCLE SALES

Description of objective of the amendment:

To modify used motor vehicle disclosure requirements applicable to motorcycles. The Department proposes to exempt motorcycle dealers from the requirement of displaying the Wisconsin Buyer's Guide label on the motorcycle. Customers would be have to be provided with an opportunity to review the Wisconsin Buyer's Guide prior to entering into a contract to purchase a motorcycle.

Description of existing policies relevant to the rule:

The current rule requires that the Wisconsin Buyers Guide be completed and attached to any motor vehicle including a motor driven cycle. The Guide is completed based on an inspection, and gives consumers information about vehicle history and title brands, and vehicle equipment and safety requirements. Many of the disclosures on the Guide do not relate to motorcycles. Motorcycle dealers currently use a scaled down version of the Used Vehicle Disclosure Label (the predecessor of the recently created Wisconsin Buyers Guide), which they attach to a cycle handlebar.

Analysis of policy alternatives:

The Department has evaluated a request from the Wisconsin Motorcycle Dealers Association (WMDA) to eliminate required use of the Wisconsin Buyers Guide by motorcycle dealers. WMDA feels that the Guide offers little benefit to consumers because some of the disclosures do not relate to cycles, and most cycle problems are readily apparent during a test drive and walk around inspection the consumer can perform. WMDA also feels that attaching the label is impractical because of its size and even scaled−down labels are often lost during test drives.

One alternative would be to develop an alternative label that includes only disclosures relevant to motorcycle history and condition in a size that fits a cycle. However, this would not address the problem of labels becoming lost or damaged due to exposure to the elements.

Another alternative would be to entirely exempt motorcycle dealers from all used motor vehicle disclosure requirements. This alternative could easily lead to abusive practices.

The Department receives very few consumer complaints regarding motorcycle disclosure. Because the motorcycle industry has shown that it can operate without generating disgruntled consumers, the Department sees some sense in exempting motorcycle dealers from the display requirement because of the fact that the labels cannot be adequately protected from the elements outdoors.

PROPOSED AMENDMENT 5

CONSIGNMENT SALE REGULATION

Description of objective of the amendment:

To create new protections for people who sell vehicles on consignment through a dealer and to protect the people who buy those consignment vehicles.

Description of existing policies relevant to the amendment:

The Department regulates consignment agreements between the consignor and the dealer and regulates disclosure of consignment vehicles. Current regulations do not address the problem that vehicles held on a consignment basis by a dealer can be considered the dealer's property under law. Because vehicle owners usually do not realize that they have to file Uniform Commercial Code (U.C.C.) financing statements and take other steps to perfect their lien interest in their vehicles, the cars can be taken from them without compensation in a bankruptcy action or repossession by a secured lender. Under the U.C.C. at s. 402.326, Stats., vehicle owners will be protected in these situations if vehicles offered for sale on consignment are clearly marked as such and include the owner's name, and the dealership discloses to the public and creditors that it sells on consignment. This proposal will also clarify that the dealer must pay the consignor promptly when the vehicle sells.

Analysis of policy alternatives:

The Department proposes to enact regulations that will require dealers to clearly disclose that they sell on consignment, label consignment vehicles as such, and pay a vehicle consignor within 4 days of the sale. A possible variation on the proposed solution would be to also require on the consignment agreement a disclosure to the owner about how to file a U.C.C. financing statement to perfect their lien interest in the consignment vehicle.

Another alternative would be to amend those provisions of the Uniform Commercial Code that create this result and to statutorily provide that legal and equitable title to a motor vehicle remains in the titled owner when motor vehicles are sold by dealers on a consignment basis. However, this would require a statutory change and cannot be accomplished by administrative rulemaking.

PROPOSED AMENDMENT 6

PERMIT MULTIPLE OFFERS ON SINGLE VEHICLE

Description of objective of the amendment:

To clarify that a dealer may accept a subsequent offer on a vehicle when an accepted offer is already pending, and to specify required disclosures to the consumer whose offer is subject to an earlier pending offer.

Description of existing policies relevant to the amendment:

Current rules prohibit a dealership from selling a motor vehicle during the time the dealership is considering a purchase offer on the vehicle. However, the rule is silent about whether a dealership can accept a subsequent offer on a vehicle after it has accepted an earlier offer. Accepting subsequent offers is a common practice at dealerships today. The Department has not prohibited the practice.

Analysis of policy alternatives:

The Department has evaluated a request from the Wisconsin Automobile and Truck Dealers Association that the Department codify current policy regarding multiple offers on the same vehicle. The Department proposes codifying the policy because it will facilitate dealer education about allowed practices and will ensure consumers will receive disclosures when their offer is contingent on an earlier offer. One alternative would be to provide for subsequent offers to be non–binding on the consumer. Another alternative is to do nothing, which would deprive dealers and consumers of clear guidelines for a widespread and accepted practice in the industry.

PROPOSED AMENDMENT 7

SALES CONTRACT AMENDMENTS

Description of objective of the amendment:

To clarify that there are two allowed methods for dealerships to document changes to the motor vehicle purchase contract after the dealer has accepted the offer.

Description of existing policies relevant to the amendment:

By policy, the Department currently allows dealers to make changes on the motor vehicle purchase contract by writing a new contract and attaching all superseded contracts. However, current rule language says that any change must be made on the original contract and must be notated and initialed on all copies by all parties.

Analysis of policy alternatives:

The proposed change would codify current policy of allowing the two following methods for making contract changes:

- Notating and initialing the original contract or
- Rewriting the contract, including the notice that it supersedes a previous contract, and attaching all copies.

Motor vehicle purchase contracts are complex and crowded documents. Changes, notated and initialed, can result in a contract that's messy and hard to read. One alternative would be to allow a third method in which purchase contract forms vendors could redesign the contract form to include a separate column for making contract changes. However, because the contract is already very crowded, this change would complicate the form or might result in the contract becoming a multi–page form, which would increase dealer costs. The Department has received no consumer complaints resulting from its current policy of allowing dealers to make contract changes with superseded contracts, and believes no consumer harm will result from codifying current practice.

PROPOSED AMENDMENT 8

AUCTION PURCHASE RESCISSION RIGHTS

Description of objective of the amendment:

Amend s. Trans 138.05 (5) to give the auctions 14 rather than 12 days to provide clear title before a dealer can rescind a purchase.

Description of existing policies relevant to the amendment:

At a recent meeting, wholesale auction dealers asked if we could amend s. Trans 138.05 (5) to give the auctions 14 rather than 12 days to provide clear title before a dealer can rescind a purchase. Industry practice is to use the 14 day timeline. There is no policy reason to use a 12 rather than 14 day limit.

Analysis of policy alternatives:

The Department could continue to apply the 12 day standard, pick another arbitrary standard, or amend its rule to conform to industry practice. The Department believes following industry practice is practical in this situation.

PROPOSED AMENDMENT 9

PROHIBIT ARTIFICIAL CONTRACT ADJUSTMENTS

Description of objective of the amendment:

To restrict fraudulent consumer loan application practices made possible by artificial adjustments to the price of a vehicle.

Description of existing policies relevant to the amendment:

Under current law, dealers may set the price of a vehicle as indicated on a sales contract without regard to the asking price or MSRP (Manufacturer's Suggested Retail Price) for a vehicle. This can result in essentially fraudulent loan applications being forwarded to lenders. Lenders require consumers to put sufficient equity into a car when purchasing it to demonstrate the capacity to pay off the loan. Dealerships sometimes artificially inflate the price of a vehicle, even above the vehicle's MSRP, and then give an artificial discount to the consumer, so that the person appears to have the requisite amount of equity in the car but, in fact, does not. These practices defraud lenders who are faced with borrowers who cannot pay for their cars.

This proposal would require dealers to list on the contract the MSRP for a new vehicle or the price from the Wisconsin Buyers Guide for a used vehicle. Dealers will still be able to make adjustments to sales prices to reflect actual discounts from MSRP or the price on the Wisconsin Buyers Guide, but will not be able to exceed those limits.

Analysis of policy alternatives:

Not regulating the basic price a dealer inserts onto a sales contract would perpetuate the problems currently evident in these transactions. Requiring the sales contract to more accurately reflect the transaction should eliminate fraud on lenders and make contracts more understandable for consumers.

This proposal will not affect a dealer's ability to sell vehicles at prices above the MSRP. A "dealer markup," however, would have to be shown to reflect the fact that the price has been inflated above the MSRP.

PROPOSED AMENDMENT 10

SALES CONTRACT DISCLOSURE REQUIREMENTS

Description of objective of the amendment:

Amend current s. Trans 139.05 (2) (g) to permit dealers to provide a total cash price for a vehicle on the face of the motor vehicle purchase contract and to incorporate by reference a computer printout or other document that itemizes the components of that price. The consumer would sign the incorporated sheet.

Description of existing policies relevant to the amendment:

Current policy requires dealers to specify all components of price on the face of the purchase contract to ensure consumers are agreeing to each charge that makes up part of the price and to ensure that the consumer reviews the list of components that will be provided as part of the contract.

Analysis of policy alternatives:

The proposed change will reduce transcription errors and lower dealers' transactional costs by allowing them to use computer generated lists of options on new vehicles not in stock as attachments to the contract, rather than requiring that the information be handwritten or typed onto the contract. Because the consumer will review and sign the attachment, the Department believes consumer protection will not be diminished.

PROPOSED AMENDMENT 11

LIEN PAYOFF ADJUSTMENTS

Description of objective of the amendment:

Regulate adjustments to the amount due on delivery when a lien pay–off is an estimate.

Description of existing policies relevant to the amendment:

The parties are often unsure of the exact payoff amount of an outstanding loan secured by a motor vehicle to be accepted in trade by a dealer. Estimated pay−off amounts are often inserted into contracts, and the amount due at closing is then adjusted to reflect the actual pay−off amount. When the estimate is significantly incorrect, however, it can leave a consumer with a contract obligation he/she cannot afford to consummate. Existing regulations do not address this problem.

Analysis of policy alternatives:

This rule change would allow consumers to rescind a motor vehicle purchase contract without penalty if an adjustment for an estimated lien pay−off increases the amount due on delivery by more than an amount agreed upon and specified in the contract.

One alternative would be to designate by rule the amount a lien pay−off estimate may vary from the actual pay−off, for example, as a fraction of the original loan amount. However, the proposed alternative allowing the consumer and dealer to agree on the allowed variance allows the consumer to designate an amount he/she can actually afford.

Another alternative would be to allow the dealer and consumer to fill in an agreed upon amount of variance up to a dollar limit specified by rule.

Not making any rule change would result in consumers continuing to face contract obligations that they cannot fulfill.

PROPOSED AMENDMENT 12

VEHICLE REBATES

Description of objective of the amendment:

Allow a consumer to rescind a contract without penalty when a rebate conditioned on consumer or vehicle eligibility is unavailable at the time of delivery.

Description of existing policies relevant to the amendment:

The current rule requires the dealer to reference rebates separately on the contract by dollar amount and assignment. The parties are often unsure when the contract is completed whether a consumer will qualify for a rebate that may expire before delivery, or may be conditioned on consumer eligibility−−for example, based on student or first−time−buyer status. When an anticipated rebate is unavailable at the time of delivery, it is unclear whether the consumer or the dealer has to make up the price difference. Existing regulations do not address this problem.

Analysis of policy alternatives:

This rule change would require that a contract conspicuously disclose if a referenced rebate is conditioned on the consumer's or vehicle's eligibility to be determined at the time of delivery. The proposal would also allow consumers to rescind a contract if they fail to qualify for a rebate referenced in the contract. It would also require dealers to pass on to the consumer any rebate, not referenced in the contract, for which the consumer becomes eligible at the time of delivery. Not making any change would result in consumers continuing to face contract obligations they cannot fulfill.

PROPOSED AMENDMENT 13

LIEN SATISFACTION

Description of objective of the amendment:

Require dealers to pay off loans on a trade−in vehicle within 7 business days of acquiring the vehicle.

Description of existing policies relevant to the amendment:

Currently, regulations and statutes prohibit the sale of encumbered property and, therefore, require dealerships to satisfy liens on trade−in vehicles before selling them. However, current regulations include no requirement that the dealership pay off the lien while it possesses the vehicle, but before selling it. If a dealer delays paying−off a loan on a trade−in vehicle which it hasn't yet sold, a consumer may receive demands for payment of the debt, delinquency notices, bad credit reports to credit agencies or may be sued for the outstanding amount due. If consumers actually do make payments, the amount the dealer has to pay to satisfy the debt is unfairly reduced.

Analysis of policy alternatives:

The proposed alternative requiring dealers to pay off the loan within 7 days of acquiring a trade−in vehicle, is consistent with the number of days a dealer has to file title/registration application under s. 342.16, Stats., and it allows reasonable time for dealership staff to process the transaction.

One alternative would be to require dealers to pay any and all late fees, interest, or additional charges made to the consumer because of failure to promptly satisfy the debt as required. Another alternative would be for the Department to require that the consumer be named as a co−payee on a check to satisfy the debt at the time of vehicle trade−in and require dealers to provide notice to consumers of their right to have the debt promptly paid.

The Department has chosen to first propose this less burdensome requirement.

PROPOSED AMENDMENT 14

CONTRACT DISCLOSURE REQUIREMENTS

Description of objective of the amendment:

Make the penalty warning more apparent to the consumer by moving it next to the contract signature block.

Description of existing policies relevant to the amendment:

Current rules require that any penalty the consumer will pay for non−acceptance of the vehicle be specifically referenced on the contract.

Analysis of policy alternatives:

One of the most common points of confusion for consumers in vehicle purchase transactions is the fact that the motor vehicle purchase contract is binding once signed, and that they may pay a penalty of up to 5% of the purchase price if they renege. The proposed change would make the warning of a penalty more conspicuous to consumers by mandating that it be placed directly above the purchaser's signature on the contract.

One alternative would be to require dealers to provide a separate disclosure for consumers to sign explaining that the contract is binding and that there may be a penalty for non−acceptance. This alternative would be more burdensome for dealers, and would complicate the transactions with another form. Another alternative would be to add a box beside the penalty warning on the contract for the consumer to check off and initial. Making no rule change would perpetuate consumer confusion about the consequences of reneging on a motor vehicle purchase contract.

PROPOSED AMENDMENT 15

SALES CONTRACTS SUBJECT TO FINANCING

Description of objective of the amendment:

Require a dealer either:

(a) To cancel a purchase contract within 5 business days of its execution if the credit terms disclosed in the contract cannot be obtained for the customer or

(b) Be bound to delivery of the vehicle on those terms.

Description of existing policies relevant to the amendment:

This proposal relates to situations in which a purchaser is obligated to finance the vehicle purchase on the disclosed credit terms. The present rule language is unclear whether the dealer is obligated to make the disclosed terms available if the consumer fails to qualify for credit with the finance company to which the dealer intends to assign the loan. In some cases, dealers cannot commit to credit terms at the time the purchase contract is signed because the purchaser's eligibility is unknown.

Analysis of policy alternatives:

The Department has evaluated a request from the Wisconsin Automobile and Truck Dealers Association, and is proposing amending the rule to allow dealers to condition the availability of credit terms on the consumer being approved for credit on those terms. The proposal requires the dealer to cancel the contract in writing to the consumer within 5 days of signing the contract or the dealer will be obligated to provide credit on the disclosed terms. The contract must contain a provision requiring the dealer to give a consumer written notice of the cancellation within 5 days or the dealer cannot cancel the contract. The dealer also must make a good faith effort to obtain approval of the consumer's credit. The Department would define in the rule a "good faith effort to obtain financing."

The dealer association proposed giving dealers 10 days to notify consumers when they fail to qualify for credit. However, the Department believes 5 days allows time for the dealer's administrative processes while not unduly delaying the consumer. The Department also believes the amendment should make clear that the dealer may not cancel the deal after delivering the vehicle if the consumer fails to qualify for credit.

PROPOSED AMENDMENT 16

SALES CONTRACTS SUBJECT TO FINANCING

Description of objective of the amendment:

WATDA has asked the Department to evaluate the possibility of reducing the time period a dealer must wait for a consumer to accept or reject proposed credit terms when the consumer has not yet signed a binding purchase contract. The Department has evaluated WATDA's request and proposes that dealers be allowed to cancel a purchase contract, in which credit terms were not originally offered and disclosed, if the purchaser fails to accept credit terms offered to them in writing after the contract is signed but before vehicle delivery. If the vehicle was not yet ready for delivery, consumers would have 10 business days to respond to a written offer and disclosure of credit terms, and could reject the credit terms and break the deal without penalty. If the specified delivery date had arrived and the vehicle was available for delivery, the consumer would have 5 business days after receiving written disclosure of credit terms to enter into a consumer credit agreement for purchase of the vehicle on the terms disclosed. If the consumer rejected the credit terms or did not respond in the allowed time, the dealer could cancel the contract with no penalty to either party.

Description of existing policies relevant to the amendment:

Currently, the contract is contingent on the purchaser finding financing he/she finds acceptable, no binding contract is created. At the time of delivery, the consumer reviews the credit terms the dealer can provide and may accept or reject the whole transaction without penalty. The current rule is unclear about whether a dealer can disclose available credit terms to the consumer after the contract is signed, but before delivery, in order to secure the consumer's decision to accept or reject a binding contract.

Analysis of policy alternatives:

The proposed alternative would more accurately reflect modern loan review processes that allow credit terms to be known soon after the contract is signed and often well before the vehicle is available for delivery. It would reduce the amount of time a dealer must hold a vehicle for a consumer who has not yet committed to a binding contract for the sale. One alternative would be to require that the proposed addendum, which is binding on the consumer if signed, include the warning in s. Trans 139.05 (2) (i) regarding the penalty for not accepting the vehicle. Another alternative would be to combine box A and box B of the Finance Transaction section of the purchase contract into one choice in which the dealer creates a binding contract by either disclosing known credit terms or disclosing an estimate that will not exceed an agreed upon amount. This alternative would benefit dealers by creating a binding contract sooner; however, it would harm consumers by eliminating an option they now have to make a tentative deal they may later reject without penalty if exact financing terms are not acceptable.

PROPOSED AMENDMENT 17

SALES CONTRACTS SUBJECT TO FINANCING

Description of objective of the amendment:

To clarify that a dealer may cancel a purchase contract by a date specified in the contract if the contract is subject to the consumer obtaining acceptable financing of the consumer's choice, and the consumer does not notify the dealer in writing that financing has been secured.

Description of existing policies relevant to the amendment:

This concept is already reflected in the standard purchase contract language, though not prescribed by the Department. The proposed change would codify the policy in the rule.

Analysis of policy alternatives:

The proposed change would codify current policy, and would allow dealers and consumers to limit the amount of time a vehicle would be tied up while a consumer tries to get a loan. The proposal limits dealership costs for interest and storage of vehicles that cannot be sold while awaiting a prospective purchaser's response about securing financing. One alternative would be to make no rule change. Making no rule change would allow vendors of the motor vehicle purchase contract to modify or eliminate the current policy by changing or removing the current contract provision from the form at will.

PROPOSED AMENDMENT 18

AMENDMENT DUE TO TAX CHANGES

Description of objective of the amendment:

To allow dealers to change the purchase contract if federal, state or local taxes change.

Description of existing policies relevant to the amendment:

Current rule language allows dealers to change the contract price of a vehicle if the state or federal tax rate changes, but not if a local tax rate changes or if the tax amount changes for another reason, such as the creation of a new tax.

Analysis of policy alternatives:

The change would codify current Department policy of allowing dealers to adjust the contract price in response to tax changes that result from a local tax rate change or the creation of a new tax, such as the Brewer Stadium tax, and new county sales taxes.

PROPOSED AMENDMENT 19

DISCLOSURE OF VEHICLE DAMAGE

Description of objective of the amendment:

Exclude audio equipment and molding damage when calculating whether a new vehicle has been damaged to the extent of more than 6% of its value when that equipment is replaced with identical manufacturer's original equipment.

Description of existing policies relevant to the amendment:

Current law requires dealers to disclose to customers that a new vehicle has been damaged and required repairs amounting to 6% or more of the MSRP. Damaged glass, tires and bumpers, when replaced by identical manufacturer's original equipment, are currently excluded from the calculation because these items are particularly vulnerable to damage during transit, dealership testing, or as a result of vandalism.

Current law also requires manufacturers to disclose to dealers any damage to a vehicle exceeding 6% of the MSRP between the time of manufacture and the time of delivery, but excludes from that calculation damage to glass, tires, bumpers, fenders, moldings, audio equipment, instrument panels, hoods and deck lids, when replaced with identical manufacturer's original equipment.

Analysis of policy alternatives:

The Department has evaluated WATDA's request for this change, and proposes that the consumer disclosure requirement of s. Trans 139.05 (6) be made more consistent with the provision in s. 218.01 (2d) (a), Stats., that permits dealers to reject delivery of vehicles that arrive with certain damage. This change would allow dealers in more situations to sell vehicles without disclosing to the consumer minor damage that has been corrected with original manufacturer's equipment−−damage which, if disclosed, could potentially affect a vehicle's value. The proposal would continue to require that any damaged items excluded from the 6% calculation be replaced with identical manufacturer's original equipment.

The Department could require disclosure of all repairs made to vehicles, continue the current policy requiring dealers to disclose repairs that exceed 6% of the vehicle's MSRP, adjust the percentage level to some other number, or exempt certain items from the calculation. Disclosing all repairs would provide consumers with the most knowledge about the vehicle they are buying, but might lower profit margins for dealers on vehicles that are stigmatized by having minor damage repaired, even when the vehicles have been returned to their original state through replacement of identical manufacturer's original equipment.

Allowing damage to moldings and audio equipment to be excluded from the calculation would allow dealers to sell more new vehicles free of the stigma of being repaired vehicles.

PROPOSED AMENDMENT 20

USED VEHICLE DISCLOSURES

Description of objective of the amendment:

Clarify that a dealer may complete a purchase contract for a vehicle without inspecting and disclosing it if the vehicle is exempt by rule from inspection and disclosure.

Description of existing policies relevant to the amendment:

Section Trans 139.04 (6) (c) exempts certain vehicles, for example, unrepaired salvage, from inspection and disclosure required under s. Trans 139.04 (6) (a) and (b). However, s. Trans 139.05 (11) does not make clear that a purchase contract can be written for a vehicle that has not been inspected and disclosed when the vehicle is exempt from inspection and disclosure.

Analysis of policy alternatives:

This is a technical, non−substantive change that restates existing policy. No policy change will result.

PROPOSED AMENDMENT 21

CONSISTENT USE OF TERMS THROUGHOUT RULE

Description of objective of the amendment:

To eliminate use of the term "service agreement" in the rule and to use "service contract" throughout instead. (Current rule uses both terms for this kind of contract.)

Description of existing policies relevant to the amendment:

None. This change is simply a language revision that is being made for consistency.

Analysis of policy alternatives:

No policy change will result from this language change.

PROPOSED AMENDMENT 22

REIMPOSE WARRANTY DISCLOSURE REQUIREMENTS ON PURCHASE CONTRACTS

Description of objective of the amendment:

In the Department's last amendments to ch. Trans 139, a number of disclosure requirements with regard to warranty information potentially pertinent to consumers were removed from the required purchase contract, as was the provision that clearly provided dealers are financially responsible for providing warranty coverage to a customer if they misinform the customer about the existence or nature of a warranty and the customer is damaged as a result.

Misinformation regarding warranties has resurfaced as a significant problem since the purchase contract disclosure requirements were loosened in 1996. The Department therefore proposes to reintroduce the consumer protections repealed in the 1996 rulemaking.

Description of existing policies relevant to the amendment:

With or without this amendment, dealers are liable for misrepresenting warranty information to consumers and face potential license suspension or revocation for such actions. Because the abandonment of purchase contract disclosures has led to increased complaints about warranty misrepresentations, it would appear that the Department's 1996 decision to repeal the disclosure requirement was in error.

Analysis of policy alternatives:

The Department could take more aggressive licensing action against dealers who misrepresent warranty information to customers and suggest that those customers file bond claims against offending dealers. This might deter other dealers from engaging in similar behavior. Because the Department saw fewer such cases when disclosure was required in the purchase contract, and the Department prefers to work with the industry to solve such problems rather than deterring through prosecution, the Department has elected to amend the rule to clarify a dealer's responsibility in the area of warranty disclosures.

Statutory authority for the rule amendments:

SS. 218.01 (5), 227.10 and 227.11, Stats.

Time estimate:

The Department expects 200 hours will be expended developing these proposed rule amendments. The Department does not expect to use other resources in rule development.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

Please check the Bulletin of Proceedings for further information on a particular rule.

Agriculture, Trade & Consumer Protection

Rule Submittal Date

On October 8, 1998, the Wisconsin Department of Agriculture, Trade & Consumer Protection referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends chs. ATCP 10, 11 and 12, Wis. Adm. Code, relating to animal health fees.

Agency Procedure for Promulgation

Public hearings are required and will be held after the Wisconsin Legislative Council Rules Clearinghouse completes its review of the proposed rule. The Division of Animal Health is primarily responsible for promulgation of this rule.

Contact Person

If you have questions regarding this rule, you may contact:

Lynn Jarzombeck
Division of Animal Health
Telephone (608) 224–4883

or

Attorney Ruth Heike
Telephone (608) 224–5025

Agriculture, Trade & Consumer Protection

Rule Submittal Date

On October 13, 1998, the Wisconsin Department of Agriculture, Trade & Consumer Protection referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. ATCP 2, 40, 42, 45, 50, 92, 100, 109, 118 (Jus 2), 121 and 161, Wis. Adm. Code, relating to technical and remedial rule changes pertaining to farm mediation and arbitration, sustainable agriculture, agricultural development and diversification, commercial feed, soil and water resource management, LP gas meters, freezer meat and food service plans, referral selling plans and car rental notices.

Agency Procedure for Promulgation

A public hearing is required and the Department will hold a public hearing after the Wisconsin Legislative Council Rules Clearinghouse completes its review. The Office of Legal Counsel is primarily responsible for promulgation of this rule.

Contact Person

If you have questions regarding this rule, you may contact:

Margaret Maly
Office of Legal Counsel
Telephone (608) 224–5023

Natural Resources

Rule Submittal Date

On October 9, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [Board Order No. FH–56–98] affecting ch. NR 20 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects ch. NR 20, relating to sport fishing regulations.

Agency Procedure for Promulgation

Public hearings are required, and public hearings are scheduled for November 11 and 12, 1998.

Contact Person

If you have questions regarding this rule, you may contact:

Tim Simonson
Bureau of Fisheries Mgmt. & Habitat Protection
Telephone (608) 266–5222

Natural Resources

Rule Submittal Date

On October 9, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [Board Order No. LE–49–98] affecting ss. NR 20.02 and 23.02 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects ss. NR 20.02 and 23.02, relating to Wisconsin–Michigan boundary waters.

Agency Procedure for Promulgation

A public hearing is required, and a public hearing is scheduled for November 12, 1998.

Contact Person

If you have questions regarding this rule, you may contact:

Gary Homuth
Bureau of Law Enforcement
Telephone (608) 266–3244

Natural Resources

Rule Submittal Date

On October 9, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [Board Order No. CF–57–98] affecting ch. NR 167 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects ch. NR 167, relating to the land recycling loan program.

Agency Procedure for Promulgation

Public hearings are required, and are scheduled for November 13, 16 and 19, 1998.

Contact Person

If you have questions regarding this rule, you may contact:

Tom Reardon
Bureau of Community Financial Assistance
Telephone (608) 267–0801

Natural Resources

Rule Submittal Date

On October 9, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [Board Order No. DG–52–98] affecting ch. NR 809 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects ch. NR 809, relating to public drinking water systems.

Agency Procedure for Promulgation

Public hearings are required, and are scheduled for November 13 and 18, 1998.

Contact Person

If you have questions regarding this rule, you may contact:

Lee Boushon
Bureau of Drinking Water and Groundwater
Telephone (608) 266–0857

Transportation

Rule Submittal Date

In accordance with s. 227.14 (4m), Stats., on October 7, 1998, the Wisconsin Department of Transportation submitted a proposed rule order affecting ch. Trans 305 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects ch. Trans 305, relating to vehicle restraining devices.

Agency Procedure for Promulgation

A public hearing is not required. The organizational unit responsible for the promulgation of the proposed rule is the Division of State Patrol.

Contact Person

If you have questions regarding this rule, you may contact:

Julie A. Johnson, Paralegal
Dept. of Transportation
Telephone (608) 266–8810

Transportation

Rule Submittal Date

In accordance with s. 227.14 (4m), Stats., on October 13, 1998, the Wisconsin Department of Transportation submitted a proposed rule order affecting ch. Trans 300 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects ch. Trans 300, relating to school bus equipment standards.

Agency Procedure for Promulgation

A public hearing is not required. The organizational unit responsible for the promulgation of the proposed rule is the Division of State Patrol.

Contact Person

If you have questions regarding this rule, you may contact:

Julie A. Johnson, Paralegal
Dept. of Transportation
Telephone (608) 266–8810

Notice of Hearing

Agriculture, Trade & Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed department rule related to licensing fees charged to license livestock markets, livestock dealers and livestock truckers, registration fees charged to the keepers of farm–raised deer, fees charged for a permit to operate an approved feedlot and the fee charged to an accredited veterinarian for interstate health certificate or certificate of veterinary inspection forms (proposed chs. ATCP 10 and 11, Wis. Adm. Code). The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **November 30, 1998**, for additional written comments. An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **November 9, 1998**, either by writing to Lynn Jarzombeck, P. O. Box 8911, Madison, WI 53708–8911, or by calling 608–224–4883. TTY users call 608–224–5058.

Hearing Information

November 16, 1998	**Dept. of Agriculture, Trade**
Monday	**and Consumer Protection**
commencing at 5:30 p.m.	**Board Room**
	2811 Agriculture Drive
	Madison, WI
Handicapped accessible	
November 17, 1998	**Dept. of Agriculture, Trade**
Tuesday	**and Consumer Protection**
commencing at 5:30 p.m.	**3610 Oakwood Hills Parkway**
	Eau Claire, WI
Handicapped accessible	
November 18, 1998	**District State Office Bldg.**
Wednesday	**Room 152B**
commencing at 2:30 p.m.	**200 N. Jefferson St.**
	Green Bay, WI
Handicapped accessible	

Written comments will be accepted until **November 30, 1998**.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.06 (1g), 93.07(1), 95.55(3), 95.68(8), 95.69(8), 95.71(8), and 95.715(2)(d)

Statutes interpreted: ss. 93.06(1g), 95.55(3), 95.68(4), 95.69(4), 95.71(5), and 95.715(2)(a)

This rule changes the fees charged for obtaining a livestock market license, a livestock dealer license, a livestock trucker license, a livestock vehicle registration, an approved feedlot permit and forms to be used by accredited veterinarians for interstate health certificates or certificates of veterinary inspection. It also removes the provisions in current rules which eliminate the registration fee for farm–raised deer after December 31, 1998, and exempts owners of certified accredited tuberculosis–free farm–raised deer herds from paying registration fees. In each instance the statutes either direct the department to establish fees by rule, or establish a fee which will apply unless the department specifies a different fee by rule.

Farm-Raised Deer Registrations

Under s. 95.55(3), Wis. Stats., the department is required to specify, by rule, the fee for registration for a person keeping farm–raised deer. The current rule, ATCP 10.652(5)(a) Wis. Admin. Code, establishes a fee of $50 if the person keeps no more than 15 farm–raised deer. If the person keeps more than 15 farm–raised deer, the fee is $100. The current rule indicates that these fees do not apply after December 31,

1998, and they do not apply if the herd is certified as an accredited tuberculosis–free herd by the department. In addition, a person who holds a valid registration on December 31, 1998, is not required to apply for annual renewal of the registration, rather the registration remains in effect until suspended or revoked by the department.

Under this proposed rule, the fee of $50 for a person who keeps no more than 15 farm–raised deer and $100 for a person who keeps more than 15 farm–raised deer is unchanged. However, the exemption from payment of the fee after December 31, 1998, and the exemption from payment of the fee if the herd is certified as an accredited tuberculosis–free herd are removed. People who keep farm–raised deer will be required to register and pay the fee annually. The department needs to continue collecting these fees to enable the department to continue to assist the industry in disease control efforts, and to protect the dairy industry from diseases which might be transmitted from farm–raised deer to dairy cattle.

Livestock Markets Licenses

Livestock market license fees are currently established by s. 95.68(4), Wis. Stats., and s. 12.02(2m), Wis. Admin. Code. A livestock market, other than an equine market, which holds 5 or more sales per year is required to pay an annual fee of $150. A livestock market, other than an equine market, which holds fewer than 5 sales per year is required to pay an annual fee of $75. An equine market is required to pay an annual fee of $100. In addition, the holder of a livestock market license is required to pay an annual fee of $5 for each livestock vehicle registered by the livestock market licensee. The statute authorizes the department to change these fees by rule.

Under this proposed rule, the annual fee for a livestock market, other than an equine market, which holds 5 or more sales in a year is $225. The annual fee for a livestock market, other than an equine market, which holds fewer than 5 sales in a year is $115. The annual fee for an equine market is $150. The annual fee to register each livestock vehicle is $10.

The department needs this fee increase to permit it to continue its efforts to control the potential spread of animal disease through the marketing system.

Livestock Dealer Licenses

Livestock dealer license fees are currently established by s. 95.69(4), Wis. Stats., and s. ATCP 12.03(2m) Wis. Admin. Code. Under these provisions, a livestock dealer pays an annual fee of $75 for the license and an annual fee of $5 for each livestock vehicle registered. The statute authorizes the department to change these fees by rule.

Under this proposed rule, the livestock dealer will be required to pay an annual license fee of $115 for the license and an annual fee of $10 for each livestock vehicle registered.

The department needs this fee increase to permit it to continue its efforts to control the potential spread of animal disease through the dealers' operations. It particularly needs this to enable it to conduct random records checks among dealers to assure that the department will be able to use dealer records to complete a traceback of all animals which have been in contact with an animal that has been identified as an animal infected with serious contagious diseases like tuberculosis or brucellosis.

Livestock Trucker Licenses

Livestock trucker license fees are currently established by s. 95.71(5), Wis. Stats., and ATCP 12.04(2m), Wis. Admin. Code. Under these provisions a livestock trucker pays an annual fee of $20 for the license and an annual registration fee of $5 for each livestock vehicle registered. The statute specifically authorizes the department to change these fees by rule.

Under this proposed rule, the livestock trucker would be required to pay an annual license fee of $30 and an annual registration fee of $10 for each livestock vehicle registered.

The department needs this fee increase to permit it to monitor trucker activities to assure they handle animals humanely and maintain records which may play a crucial role in the traceback of disease should the need arise.

Approved Feedlot Permits

The current approved feedlot permit fee is established by ATCP 11.14(2) Wis. Admin. Code under the authority of s. 95.751(2)(d), Wis. Stats. The person holding or seeking an approved feedlot permit pays an annual fee of $50.

Under this proposed rule, the permit fee for an approved feedlot would be $75.

The department needs this fee increase to permit it to continue its efforts to assure that no disease is introduced to Wisconsin's animal industry from animals imported to or kept in an approved feedlot.

Interstate Health Certificate Forms

Under s. 93.06(1g) Wis. Stats., the department may furnish veterinarians with forms which are to be used by them to issue interstate health certificates or certificates of veterinary inspection. The statute provides that the charge for these blank forms will be $2 unless the department specifies a different fee by rule.

Under this rule, the fee for forms to be used for interstate health certificates or certificates of veterinary inspection will be $3 per form.

The department needs this fee increase to offset the increased cost of monitoring the interstate shipment of animals.

Fiscal Estimate

The complete fiscal note is available on request.

Wisconsin's animal health programs are funded by general purpose revenues (GPR) and program revenues (PR). For 1998–99, program revenues supported 17% of program costs. Program costs have increased due to new statutorily assigned regulatory responsibilities, GPR cutbacks and inflationary increases. This proposal will generate approximately $91,000 in program revenue. This increase is needed to maintain services at existing program levels.

Initial Regulatory Flexibility Analysis

General Overview

This rule changes the fee charged for a livestock market license, a livestock dealer license, a livestock trucker license, a livestock vehicle registration, an approved feedlot permit and an interstate health certificate or certificate of veterinary inspection form. This rule also continues the annual registration process for farm–raised deer which is set to expire after December 31, 1998, and eliminates any farm–raised deer registration fee exemptions.

This rule will affect small businesses in Wisconsin. It includes provisions which relate to small businesses engaged in livestock activities such as marketing, dealing, trucking and feedlot raising, veterinary services and the farming of farm–raised deer.

Livestock Market, Dealer and Trucker Licenses and Approved Feedlot Permits

Wisconsin statutes require a person operating a livestock market or operating as a livestock dealer or livestock trucker to be licensed by the Department of Agriculture, Trade and Consumer Protection. Additionally, any livestock vehicles used by the person to transport livestock in the state must also be registered by the department. Wisconsin statutes also authorize the department to issue approved feedlot permits. The department has statutory authority to set fees for these licenses and permits by rule.

This rule changes the fee for a basic annual license as follows:

For a livestock market operator:

For a market, other than an equine market, conducting sales on 5 or more days a year, the fee changes from $150 to $225.

For a market, other than an equine market, conducting sales on fewer than 5 days a year, the fee changes from $75 to $115.

For an equine market, the fee changes from $100 to $150.

For a livestock dealer:

The fee changes from $75 to $115.

For a livestock trucker:

The fee changes from $20 to $30.

This rule changes the fee that a livestock market operator, livestock dealer and livestock trucker must pay for a supplementary annual license for each livestock vehicle registered from $5 to $10.

This rule also changes the fee that a feedlot operator must pay for an approved feedlot permit from $50 to $75.

Many small businesses involved in livestock activities across Wisconsin will be affected by these fee increases. Presently, 62 basic annual livestock market licenses, 457 basic annual livestock dealer licenses, 486 basic annual livestock trucker licenses and 50 approved feedlot permits are issued along with 3,359 supplementary annual licenses for registered livestock vehicles. The department does not have adequate information to allow it to determine how many of these businesses fit the definition of small businesses. The department assumes that a significant number of these businesses are properly classified small businesses.

These small businesses will experience an increase in the cost of obtaining licenses, permits or certificates related to their business. The actual dollars of the increases vary from $5 for livestock vehicles to $75 for livestock market operators who conduct more than 5 sales per year. The benefit to these businesses of having the department provide services designed to assure the health of animals in Wisconsin animal agriculture far outweighs the amount of additional fees which each business will pay.

The regulatory work performed by the department is essential to the control of animal diseases in the state thus creating a viable environment for these small businesses to operate. The department enforces requirements designed to prevent the introduction of diseased animals, conducts surveillance programs designed to detect diseases and takes steps to control outbreaks of contagious diseases. These department services help to ensure healthy livestock and a strong continuing animal agriculture industry for the state.

There are no requirements in this rule relating to recordkeeping or reporting information to the department.

Interstate Health Certificate Forms

The department presently furnishes veterinarians in the state with forms which are used by them to issue interstate health certificates or certificates of veterinary inspection. The current fee for a form is $2.

This rule changes the form fee from $2 to $3.

All veterinary services in the state that issue interstate health certificate forms will be affected by this fee increase. Health certificates are prepared for the movement of animals. Approximately 28,000 health certificate forms are sold by the department each year. This fee increase will increase the operating costs of these veterinary services in direct proportion to the number of health certificate forms it issues.

Interstate health certificates serve as a mechanism to regulate the animal industries of the state. They guarantee the movement of healthy animals, thus providing protection to the animal owners of the state and reducing any public health risk. This fee increase supports the department's continuing efforts to ensure the health of the animals in the state resulting in savings in the future for the Wisconsin animal owner.

This rule does not add any recording keeping or reporting requirements to small businesses.

Farm-Raised Deer Registrations

A person keeping farm–raised deer is presently required to annually register with the department. The department sets fees for registration by rule. Current fees are:

$50, for 15 or fewer farm−raised deer.

$100, for more than 15 farm−raised deer.

$0, if the herd of farm−raised deer is certified by the department as an accredited tuberculosis−free herd.

Current fees and the requirement to annually register (renew) are set to sunset, or end, on December 31, 1998.

This rule eliminates the sunset provision scheduled to take effect on December 31, 1998. Fees at their current level would continue except that the exemption for an accredited tuberculosis−free herd will be removed. All farm−raised deer owners would be required to register annually and pay the applicable fee.

Approximately 254 farm−raised deer farms exist that would be impacted by this rule change. These farmers have paid annual registration fees up through and including 1998. This rule would not change or increase the fees which they have paid. It would increase their anticipated costs of doing business because it requires payment of a fee which the farmers expected to be sunset at the end of 1998. A small number of these farmers, less than 30, presently pay no fee since they have herds certified as accredited tuberculosis−free herds by the department. These farmers would experience an increase in annual costs since they would now be required to pay a registration fee.

Whether or not a fee is applicable, all farm−raised deer farmers presently are required to complete an annual registration application. Under the current rule, the requirement to file an annual registration application would sunset at the end of 1998. Therefore, there is a minimal additional requirement of requiring these businesses to continue to file the application forms which they have previously filed. These forms are very short and do not require extensive time or effort to complete.

The department has incurred substantial costs in responding to the needs of the farm−raised deer industry to date. Continuation of farm−raised deer registration fees will help to maintain essential program work. The recent state cervidae tuberculosis outbreaks signify the necessity of an animal health program for deer and elk. The growth and prosperity of the industry is dependent upon healthy stock. The benefit to the industry of having this department work continued exceeds the costs incurred to comply with this rule.

Notice of the proposed rule has been delivered to the department of development, as required by s. 227.114(5), Stats.

A copy of the rule to be considered may be obtained, free of charge, from:

Animal Health Division
Wis. Dept. of Agriculture, Trade & Consumer Protection
P. O. Box 8911
Madison, WI 53708−8911

Notice of Hearing

Agriculture, Trade & Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on proposed rules (proposed s. ATCP 75.015(7)(c)2, Wis. Adm. Code) relating to license exemption for retail food establishments located in licensed restaurants. The hearing will be held at the time and place shown below. The public is invited to attend the hearing and make comments on the proposed rule. Following the public hearing, the hearing record will remain open until **November 13, 1998**, for additional written comments.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608)224−4700. Copies will also be available at the public hearing.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by November 6, 1998, either by writing to Debbie Mazanec, 2800 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608− 224−4712), or by contacting the message relay system (TTY) at 608−224−5058. Handicap access is available at the hearing.

Hearing Information

November 11, 1998
Wednesday
1:00 p.m. until 3:00 p.m.

Department of Agriculture,
Trade & Consumer Protection
Conference Room 172
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708

Handicapped accessible

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07 (1), 97.30(5) and 227.24

Statutes interpreted: ss. 97.30 and 254.64

The Wisconsin department of agriculture, trade and consumer protection (DATCP) currently licenses and inspects retail food stores under s. 97.30, Stats. The Wisconsin department of health and family services (DHFS) currently licenses and inspects restaurants under s. 254.64, Stats.

Under current rules, a person who operates a food store and restaurant at the same location may be subject to duplicate licensing and inspection by DATCP and DHFS. This rule amends current DATCP rules to eliminate duplicate licensing and inspection, starting with the license year that begins on July 1, 1998. DHFS is adopting a similar rule. Both agencies have adopted temporary emergency rules pending adoption of these "permanent" rules.

Under current DATCP rules, a person who operates a restaurant and food store at the same location is exempt from a food store license if (1) the person holds a restaurant permit from DHFS and (2) non–meal food sales at the restaurant–food store comprise no more than 25% by dollar volume of all food sales from that location.

This rule expands the current exemption. Under this rule, the operator of a combined restaurant–food store is exempt from a food store license if (1) the operator holds a restaurant permit from DHFS and (2) non–meal food sales comprise less than 50% of all food sales at the combined location. DHFS is adopting reciprocal rules that will exempt, from restaurant permit requirements, food stores licensed by DATCP whose meal sales comprise less than 50% of all food sales.

Fiscal Estimate

Currently, a retail food establishment operated by the holder of a restaurant permit is exempt from licensing as a retail food establishment if non–meal food sales at the location comprise no more than 25% by dollar volume of all meal and non–meal food sales from that location. This rule increases the dollar volume percentage of non–meal food sales to less than 50% of all meal and non–meal food sales to less than 50% of all meal and nonmeal food sales from the location in order for the holder of the restaurant permit to be exempt from licensing as a retail food establishment. This rule will effectively eliminate duplication of licensing in restaurants and retail food establishments by this agency.

Elimination of duplication of licensing will reduce the number of retail food establishment licenses issued by the department. We estimate that less than 100 businesses will be affected by this rule. At an average license fee of $100, this would result in a PRO reduction of approximately $10,000.

Several cities and counties are agents of the department for retail food establishment licensing and inspection. They issue retail food establishment licenses under the same criteria as the department, but under the authority of local ordinances. Local agents are permitted by statute to recover up to 100% of the costs of their retail food establishment licensing and inspection program. This rule should not have a fiscal effect on local retail food establishment licensing and inspection programs. The emergency rule does not apply in a city or county authorized to administer a food establishment licensing program as an agent of the department. The permanent rule will be effective for agent cities and counties for the license year beginning July 1, 1999.

Initial Regulatory Flexibility Analysis

The amendments to s. ATCP 75.015(7)(c), Wis. Adm. Code, will have a fiscal impact on small businesses as defined in s. 227.114(1)(a), Stats. Currently, approximately 7,500 retail food establishments are licensed and inspected by either the department or a local city/county health department that is an agent of the department. Retail food establishments range from small establishments that only sell pre–packaged food to large establishments which process as well as sell a variety of foods.

Over time some retail food establishments have added restaurant type operations and, conversely, some restaurants have added retail food sales operations. Under current rules, a person who operates a retail food store and a restaurant at the same location may be subject to duplicate licensing by both the Department of Agriculture, Trade and Consumer Protection (DATCP) and the Department of Health and Family Services (DHFS). Local city/county health departments that contract to perform licensing and inspection of retail food establishments as agents of the state may also issue duplicate licenses for establishments which perform both restaurant and retail food sales or processing activities.

This rule exempts holders of restaurant permits from licensing as a retail food establishment if the retail food sales at the same location as the restaurant are less than 50% of the total food sales at the location. This rule effectively eliminates unnecessary duplication of licensing in restaurants with limited retail food sales or processing activities. DHFS is adopting a similar rule which will exempt retail food establishment licensees from obtaining a restaurant permit if meal food sales are less than 50% of the total food sales. These actions will eliminate unnecessary costs and help small business by reducing their license fees and inspection costs.

The proposed rule provides specific accommodations to certain small businesses. Restaurant operators who are exempt from a retail food establishment license will no longer have to pay the retail food establishment license fee or be inspected by the DATCP or its local agent.

The proposed rule does not require any additional recordkeeping for small businesses. The proposed rule does not require any additional professional services to be acquired by small businesses.

Notice of Hearing

Agriculture, Trade & Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on proposed amendments to chapters ATCP 2, 40, 42, 45, 50, 92, 100, 109, 118 (JUS 2), 121 and 161, Wis. Adm. Code, relating to technical and remedial rule changes pertaining to farm mediation and arbitration, sustainable agriculture, agricultural development and diversification, commercial feed, soil and water resource management, LP gas meters, freezer meat and food service plans, referral selling plans and car rental notices. The hearing will be held at the time and place shown below. The public is invited to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until **December 10, 1998** for additional written comments.

A copy of this rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Office of Legal Counsel, 2811 Agriculture Drive, Box 8911, Madison, WI 53708–8911, or by calling (608–225–5023. Copies will also be available at the public hearing.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by **November 20, 1998** either by writing to Margaret Maly, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608–224–5023) or by contacting the message relay system (TTY) at **608–224–5028**. Handicap access is available at the hearing.

Hearing Information

December 3, 1998
Thursday
9:00 a.m.

Department of Agriculture,
Trade & Consumer Protection
Board Room
2811 Agriculture Drive
Madison, WI

Written comments will be accepted until **December 10, 1998.**

Analysis Prepared By the Department of Agriculture, Trade and Consumer Protection

Statutory Authority: ss. 92.05(3)(c), 93.07(1), 93.47(2), 93.50(2)(f), 94.64(9), 94.65(9), 98.245(7)(a)1. and 344.576(3)(c)

Statutes Interpreted: ch. 92 and ss. 93.46, 93.47, 93.50, 94.64, 94.65, 98.245(7)(a) , and 344.576(3)

This rule makes the following organizational and drafting changes to rules currently administered by the Department of Agriculture, Trade and Consumer Protection (DATCP):

• It renumbers ch. ATCP 2 (Farm Mediation and Arbitration Program) to ATCP 162. This reflects an organizational change in which the farm mediation and arbitration program was transferred from the secretary's office to the marketing division in DATCP.

• It repeals ch. ATCP 45 (Sustainable Agriculture Program), and incorporates the sustainable agriculture program as part of the agricultural development and diversification (ADD) grant program under ch. ATCP 161. This reflects an organizational change in which the sustainable agriculture program was transferred from the agricultural resource management division to the marketing division in DATCP. It also reflects budget legislation contained in 1997 Wis. Act 27, which merged the sustainable agriculture program with the ADD grant program.

• It updates technical standards currently incorporated by reference in ch. ATCP 40 (Fertilizer and Related Products), ATCP 42 (Commercial Feed) and ATCP 50 (Soil and Water Resource Management). It also expands some ATCP 50 technical standards for cost–shared conservation projects, to reflect new USDA technical standards. The department will request permission from the Attorney General and Revisor of Statutes to incorporate the updated technical standards by reference, as required under s. 227.21, Stats.

• It implements s. 98.245(7), Stats., which requires owners of liquid LP gas meters to register those meters with the department. The statute requires a one–time registration fee of $25. This rule incorporates the statutory fee.

• It implements s. 98.245(4), Stats., which requires temperature compensation in all liquid measurement of LP gas deliveries. 1995 Wis. Act 183 eliminated an exemption for deliveries of less than 100 gallons made directly to mobile fuel tanks. This rule modifies current DATCP rules accordingly.

• It updates obsolete addresses and cross–references in ch. ATCP 109 (Freezer Meat and Food Service Plans) and ATCP 121 (Referral Selling Plans).

• It renumbers and retitles ch. JUS 2 (Notice of Renter Liability; Rental of Passenger Vehicles) to ATCP 118 (Car Rentals; Notice of Renter Liability), and makes nonsubstantive drafting changes. The Legislature transferred responsibility for the car rental notice law under subch. V of ch. 344, Stats., from the Department of Justice to DATCP. This rule change reflects that transfer of responsibility.

Fiscal Estimate

These technical changes will have no fiscal impact on the department or local units of government.

Initial Regulatory Flexibility Analysis

This rule has no direct effect on small businesses in Wisconsin.

Notice of Hearings

Agriculture, Trade & Consumer Protection

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on proposed rules amending or repealing applicable sections of HSS 165, and the repeal and recreation of Chapter ATCP 77, Wis. Adm. Code, relating to certification of laboratories engaged in public health testing of milk, water and food. The hearing will be held at multiple locations via video–conference at the time and places shown below. The public is invited to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until **December 1, 1998**, for additional written comments.

A copy of this rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture drive, PO Box 8911, Madison, WI 53708–8911, or by calling (608) 224–4700. Copies will also be available at all locations for the public hearing.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by **November 1, 1998** either by writing to Debbie Mazanec, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708, (608) 224–4712, or by contacting the message relay system (TTY) at (608) 224–5058. Handicap access is available at all hearing locations.

Hearing Information

The hearing is scheduled for video–conference participation from each of the four locations.

Date and Time: Thursday, November 12, 1998, 10:00 a.m. until 1:00 p.m.

Locations:

Madison
State of Wisconsin
Department of Agriculture, Trade and Consumer Protection Building
2811 Agriculture Drive
Madison, Wisconsin
Room 472

Eau Claire
State of Wisconsin
State Office Building
718 Clairemont Avenue
Eau Claire, Wisconsin
Room 139

Green Bay
State of Wisconsin
State Office Building
200 North Jefferson
Green Bay, Wisconsin
Room 618

Milwaukee
State of Wisconsin
State Office Building
819 North 6th Street
Milwaukee, Wisconsin
Room 542

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07(1) and 93.12(3), (5) and (7)

Statutes interpreted: ss. 93.06(7) and (8), 93.08, 93.12, 93.14, 93.15, 93.16 and 97.12, Stats.

The 1995–97 biennial budget act, 1995 Wis. Act 27, transferred much of the administration of Wisconsin's laboratory certification program from the Department of Health and Family Services ("DHFS") to the Department of Agriculture, Trade and Consumer Protection ("DATCP").

Under this program, DATCP is now responsible for certifying laboratories that test milk, food and drinking water for compliance with public health standards. (DHFS retains jurisdiction over certain public health laboratories, such as medical laboratories.) Laboratory certification helps ensure that public health lab tests are accurate and reliable.

This rule is the foundation for the lab certification program now located in DATCP. This rule does not make major changes in the current lab certification program. However, this rule streamlines and clarifies current rules so they will be easier to read and understand. This rule repeals former DHFS lab certification rules under ch. HFS 165, Wis. Adm. Code. It also repeals and recreates DATCP's interim lab certification rules under ch. ATCP 77, Wis. Adm. Code.

Coverage

Under s. 93.12, Stats., and this rule, DATCP must certify laboratories that perform certain tests on milk, water or food, to determine compliance with federal, state or local public health standards. This rule specifies the tests for which a laboratory must be certified. Both private and public laboratories must be certified under this rule. However, certification is not required for any of the following:

- The United States government.
- Water testing by the state of Wisconsin laboratory of hygiene.
- Milk testing by DATCP.
- An educational institution that operates a laboratory solely for teaching or academic research purposes, and does not test milk, water or food for human consumption .
- A person who operates a laboratory solely to conduct quality control tests on food or water sold by that person, provided that the tests are not required by statute, rule or ordinance.

Scope of Certification

DATCP must certify a laboratory on an annual basis. An annual certification expires on December 31 of each year. A person who operates 2 or more laboratories must obtain a separate certification for each lab. DATCP must specify, in its certification, the tests which the laboratory is certified to perform.

Applying for Certification

A laboratory must apply to DATCP for certification, and must pay an annual certification fee of $216 per test. If DATCP certifies a lab to perform a test for less than a full year, the lab must pay a certification fee of $18 for each full month of certification.

DATCP must act on a certification application within 40 calendar days after it receives a complete application. A laboratory may apply, at any time, for certification to perform additional tests. A certified laboratory must file an annual renewal application by December 31 of each year.

Granting and Withdrawing Certification

DATCP may certify a laboratory that complies with this rule. DATCP may conditionally certify a laboratory pending action to correct deficiencies which DATCP has identified. DATCP may summarily suspend a conditional certification if the laboratory fails to correct the deficiencies within the time specified by DATCP.

Laboratory Facilities

A laboratory must have adequate facilities, equipment and supplies to perform the tests for which DATCP certifies that laboratory. A laboratory must also maintain the facilities, equipment and supplies in proper working condition. This rule establishes some specific facility and maintenance requirements. Under this rule, a laboratory must notify DATCP whenever the it remodels lab facilities or installs new equipment that materially affects the performance of certified tests.

Laboratory Procedures

A certified laboratory must perform tests according to recognized methods. This rule incorporates, by reference, authoritative lab manuals which spell out those recognized methods. As required under s. 227.21, Stats., DATCP has requested permission from the attorney general and the revisor of statutes to incorporate these manuals by reference in this rule.

Laboratory Administrator

A certified laboratory must designate an administrator who personally supervises the operations of the laboratory. The administrator or a designated agent of the administrator must be present at the laboratory during daytime business hours, and must do all of the following on behalf of the lab operator:

Supervise the lab and its compliance with this rule.

Review and approve the lab's certification applications to DATCP.

Supervise the procurement and maintenance of lab facilities, equipment and supplies.

Facilitate DATCP inspections of the lab.

Notify DATCP of changes in lab facilities or personnel that affect the lab's certification.

Notify lab customers if DATCP suspends or revokes the lab's certification.

Report lab test results to the appropriate regulatory agency, if required by law.

Supervise lab recordkeeping.

Laboratory Analysts

Analysts who perform tests at a certified laboratory must be proficient in performing those tests. Whenever DATCP first certifies a laboratory, or performs its biennial inspection of a certified laboratory, DATCP must evaluate the proficiency of all the analysts who are then performing tests for which the lab is certified. DATCP evaluates the analysts by watching them perform the tests.

DATCP may not certify a laboratory to test milk or water unless DATCP specifically certifies the proficiency of at least one analyst to perform each test for which the lab is certified. (This is different from DATCP's general evaluation lab analysts, described above.) DATCP must follow specific federal procedures when certifying individual milk or water analysts, and must maintain a list of certified analysts. An analyst's certification remains in effect until the analyst leaves the lab, or until DATCP suspends or revokes the analyst's certification.

A laboratory must notify DATCP if the lab no longer has certified analysts on staff to perform milk or water tests. A laboratory must also notify DATCP whenever the lab assigns a new analyst to perform any test for which the lab is certified.

Inspecting a Laboratory

DATCP must inspect a laboratory at all of the following times:

- Before certifying the laboratory for the first time.
- At least once every 2 years after it certifies the laboratory.
- Before certifying the laboratory to perform a test for which it was not previously certified.

DATCP may inspect a laboratory whenever any of the following occurs:

- The laboratory materially alters its facilities, equipment or procedures.
- The laboratory assigns a new analyst to perform a test for which the lab is currently certified.
- DATCP concludes that an inspection is necessary to determine whether the lab complies with this rule.

Milk and Water Laboratories; Proficiency Evaluation

A laboratory certified to test milk or water must undergo an annual lab proficiency evaluation. In an annual lab proficiency evaluation, the laboratory must examine samples prepared by an approved evaluator. The contents of the samples are known to the evaluator, but not to the laboratory. The evaluator must rate the laboratory's proficiency (not the proficiency of individual analysts) by comparing the laboratory's results to the known contents of the samples, and must report those results and ratings to DATCP.

DATCP, or another evaluator approved by DATCP, must evaluate a lab's proficiency in performing milk or food tests. The Wisconsin state lab of hygiene, or another evaluator approved by DATCP, must evaluate a lab's proficiency in performing water tests.

DATCP must approve lab evaluation procedures. A laboratory is not required to undergo an annual proficiency evaluation for any test unless DATCP has approved an evaluation procedure for that test. An evaluation procedure must include standards for all of the following:

- The evaluator's preparation of test samples.
- The lab's examination of test samples.
- Deadlines for examining test samples and reporting test results.
- The evaluator's review and rating of operator proficiency.

This rule specifies evaluation procedures for milk and water tests. To pass an annual milk test evaluation, a laboratory must accurately test at least 80 percent of the samples provided by the evaluator. To pass an annual water test evaluation, a laboratory must accurately test at least 90 percent of the samples provided by the evaluator.

Laboratory Records

A laboratory must keep complete records related to all of the following:

- The training, experience and proficiency testing of analysts.
- Laboratory evaluations.
- Laboratory policies and procedures.
- Laboratory facilities, equipment and supplies, including records related to procurement, calibration, testing and maintenance.
- Quality control procedures and monitoring.
- Tests performed at the laboratory, including the nature of the test, the person for whom the test is performed , the assigned analysts, the test methods used, the date and time of testing, and the test results obtained.
- Test reports filed with the department and other government agencies.

A laboratory must keep these records for at least 5 years, and must make them available for inspection and copying by DATCP upon request. A laboratory may not falsify any records.

Notice to DNR and Lab of Hygiene

Pursuant to s. 93.12(5), Stats., the department has given notice of this rule to the department of natural resources and the state laboratory of hygiene.

Fiscal Estimate

The laboratory evaluation and certification program for milk water and food laboratories was transferred from the Department of Health and Family Services to the Department of Agriculture, Trade and Consumer Protection in July, 1996. The current ch. ATCP 77 was adopted at that time to allow DATCP to collect fees to cover the cost of the program. Certification requirements which apply to milk water and foods laboratories are currently in ch. HFS 165.

The proposed repeal and recreation of ch. ATCP 77 will complete the transfer of the certification program for milk water and food laboratories from DHFS to DATCP The proposed rule does not substantially change the way in which a lab survey is conducted. The proposed rule uses concepts from ch. HFS 165 for certification of clinical laboratories, but changes the language to that which is specific and more appropriate for milk, water, and food laboratories. Therefore, there will be no state fiscal effect from the addition of the substantive provisions in ch. ATCP 77. The fee structure adopted in January, 1997, is not changed in the proposed rule.

There may be a small effect on local government costs. Under ch. HFS 165, water laboratories were not required to run proficiency tests. The proposed rule requires all laboratories that do official testing to participate in some form of proficiency testing. A municipal water plant would pay approximately $300 per year to obtain the samples plus the cost of testing the samples.

Initial Regulatory Flexibility Analysis

The repeal and recreation of ch. ATCP 77, Wis. Adm. Code, Laboratory Certification will have a small fiscal impact on small businesses as defined in s. 227.114 (1)(a), Stats. Approximately 200 laboratories are currently licensed and inspected by the department. The laboratories range from small establishments that are only certified for one test to large dairy cooperatives that have a full service milk testing laboratory at one or more locations.

The proposed laboratory certification rule replaces the existing rule (HFS 165). The standards are based on established federal (FDA and EPA) guidelines and are designed to be consistent with other state and local requirements. The changes from HFS 165 are designed to replace the clinical language with language that is more applicable to milk, water, and food testing laboratories. The fee structure outlined in the current ATCP 77 is unchanged.

The impact of the repeal and recreation will not affect milk and food laboratories. Small laboratories that are testing water will be affected by one of the changes in the proposed rule.

Key issues in the proposed rule include:

- modifying all language that refers to clinical laboratory testing and substituting language that is applicable to milk, water, and food laboratories.
- application requirements.
- procedures for suspending or revoking a laboratory's certification
- basic requirements for laboratory facilities and equipment.
- responsibilities of a laboratory administrator.
- record keeping and reporting requirements, including the reporting of changes in laboratory facilities, equipment and personnel.
- adding the requirement for proficiency testing for water laboratories and identification of acceptable levels of performance.

The only one of these items that will have an impact is the addition of the of required proficiency testing. A small water lab would pay approximately $300 per year to obtain the samples plus the cost of testing the samples.

The impact of the other changes in the proposed rule on small businesses is negligible. It would not be necessary for certified laboratories to retain additional professional services to comply with this rule.

Notice of Hearing

Health & Family Services

(Community Services, Chs. HFS 30––)

Notice is hereby given that pursuant to ss. 48.01 (1) (f), 48.48 (8) and 227.11 (2), Stats., the Department of Health and Family Services will hold a public hearing to consider the amendment of ss. HSS 51.01, 51.02, 51.03 (7), (9), (10) and (19) and 51.09 (2) (a) 2. (Note) and (b) (Note), relating to the applicability of the Department's rules that establish criteria and procedures for placement of special needs children in adoptive homes.

Hearing Information

The public hearing will be held:

Date & Time	Location
November 17, 1998 Tuesday Beginning at 1:30 p.m.	**Conference room (inside Room 472) State Office Building 1 West Wilson Street MADISON WI**

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available in the parking lot behind the building, in the Monona Terrace Convention Center Parking Ramp or in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building.

Analysis Prepared by the Dept. of Health & Family Services

The Department has rules in effect that consist of criteria and procedures for placing special needs children in adoptive homes. A special needs child is a child who is legally free for adoption and waiting for an adoptive placement but for whom it is difficult, for one reason or another, to find an adoptive home.

In Wisconsin the Department is responsible for placing most special needs children for adoption. Currently the Department's rules, ch. HSS 51, apply to the Department and child–placing agencies providing adoption services under contract with the Department. A question has been raised about whether a county agency is a "child–placing agency" as that term is used in s. HSS 51.02. Although "child–placing agency" is not defined in ch. HSS 51, the term is usually used by the Department and others to refer to private child–placing agencies licensed under ch. HSS 54. A county social services or human services agency that places children for adoption is not licensed as a child–placing agency but rather derives its authority from s. 48.57 (1) (e) or (hm), Stats.

This order amends ss. HSS 51.01 and 51.02 to make clear that a county agency providing adoption services under contract with the Department must follow the same standards as the Department. This will ensure consistency whether services are provided directly by the Department or by a licensed child–placing agency or county agency under contract to the Department. The only county that currently has a contract with the Department to provide adoption services for special needs children is Milwaukee County, and the current contract requires the Milwaukee County Human Services Department to comply with ch. HSS 51. The rule change is consistent with that contractual obligation.

The rulemaking order also amends other parts of ch. HSS 51 to correct the names of the Department, Division and Bureau. The names of those organizations were changed following state executive reorganization which was effective July 1, 1996.

Contact Person

To find out more about the hearing or to request a copy of the proposed rule changes, write or phone:

Karen Oghalai
Division of Children and Family Services
P.O. Box 8916
Madison, WI 53708–8916

Telephone (608) 266–0690 or,
if you are hearing impaired, (608) 266–7376 (TTY)

If you are hearing– or visually–impaired, do not speak English, or have other personal circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter, or a non–English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non–English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments on the proposed rule changes received at the above address no later than **November 24, 1998** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

These rule amendments will not affect the expenditures or revenues of state government or local governments.

The Department's rules for placing special needs children in adoptive homes are amended to make clear that the criteria and procedures included in the rules apply not only to the Department and private child–placing agencies but also to counties that may be providing adoption services under contract with the Department in connection with the adoption of special needs children. Only Milwaukee County currently provides adoption services under contract with the Department in connection with the adoption of special needs children, and its contract with the Department specifies that its workers are to comply with ch. HSS 51. But the rules, under Applicability, have not specified counties, only child–placing agencies and the Department. "Child–placing agency" was not defined, but is usually understood as a private child–placing agency licensed under ch. HSS 54. The amendments make clear that the rules apply also to counties.

The rulemaking order also updates the names of the Department, Division and Bureau which were changed following state executive reorganization effective July 1, 1996.

Initial Regulatory Flexibility Analysis

These amendments to the Department's rules for adoption of children with special needs will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. The amendments clarify that the rules apply to county agencies providing adoption services under contract to the Department and in the process define "child–placing agency" and "county agency" and update addresses and organization names that appear in ch. HSS 51.

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1––)

Notice is hereby given that pursuant to ss. 29.014 (1) and 227.11 (2), Stats., interpreting ss. 29.014 (1) and 29.041, Stats., the Department of Natural Resources will hold public hearings on the repeal and recreation of ch. NR 20, Wis. Adm. Code, relating to sport fishing regulations.

Agency Analysis

Chapter NR 20 is being rewritten to rearrange sections, clarify rules and eliminate redundancy and conflicting rules on specific waters and to make minor substantive changes. Currently, exceptions to seasons, length limits and other "special" regulations are scattered throughout the chapter. This proposed revision will make ch. NR 20 more "user" friendly.

The changes include:

1. Defining "Lake Michigan tributaries".
2. Defining the "Lower Wisconsin River" to consolidate currently conflicting descriptions.
3. Defining "Major Green Bay tributaries".
4. Defining the "Mid Lake Reef complex".
5. Defining "panfish" to include bluegill, black crappie, white crappie, yellow perch and add pumpkinseed, green sunfish, orangespotted sunfish and warmouth.
6. Defining "trout streams".
7. Correcting the lake trout season on Lake Michigan tributaries to match the Lake Michigan regulations.
8. Removing bays of the St. Louis River, Douglas County from the inland regulations and define them as Wisconsin–Minnesota boundary waters.
9. Clarifying the daily bag limit for panfish on outlying waters and their tributaries (most inland and outlying waters are proposed to have a daily bag limit of 25 in total).
10. Clarifying the prohibition on hook and line lake sturgeon fishing on the Lake Winnebago system.
11. Clarifying the intent of the gear restrictions for the early catch and release trout season to apply while fishing for any species on all trout streams during this period.
12. Modifying the hours of the early catch and release season for trout so the season ends at 6 p.m. on the Friday preceding the general open season, rather than 4:59 a.m. on the day of the general open season.
13. Correcting an omission on gear restrictions for Upper Neenah Creek to require artificial lures only.
14. Including all waters of Jefferson County under the category 3 trout regulations.
15. Clarifying the description of the portions of the Pecatonica River, Iowa County, having a continuous open season for hook and line fishing.
16. Correcting the name of the railroad line running along the Wisconsin side of the Mississippi and St. Croix Rivers to reflect a recent name change from the Burlington Northern Railroad to Burlington Northern and Santa Fe Railroad.
17. Including outlying waters in the requirement to mark live boxes, fish cribs, etc., with the name and address of the owner.
18. Eliminating the requirement to sign trout stamps in order to accommodate the new automated licensing system.
19. Removing a restriction that prohibits placing shelters on the ice for purposes other than fishing.
20. Eliminating Department authority to order removal of shelters from the ice when conditions are deemed unsafe.
21. Removing channel catfish from the list of detrimental species on Lake Winnebago system waters.
22. Adding bullheads to the list of detrimental fish species in Yellowstone Lake, Lafayette County.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Environmental Assessment

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code; however, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

Notice is hereby further given that the hearings will be held on:

November 11, 1998	**Conference Room**
Wednesday	**SCR Headquarters**
at 6:00 p.m.	**3911 Fish Hatchery Road**
	FITCHBURG, WI
November 12, 1998	**Wetland Room**
Thursday	**Bay Beach Wildlife Sanctuary**
at 6:00 p.m.	**Sanctuary Road**
	GREEN BAY, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Tim Simonson at (608) 266–5222 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments and Contact Person

Written comments on the proposed rule may be submitted to:

Mr. Tim Simonson
Bureau of Fisheries Mgmt. & Habitat Protection
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **November 24, 1998**, and will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [FH–56–98] and fiscal estimate may be obtained from Mr. Simonson.

Fiscal Estimate

Summary:

The rule being promulgated is based on biological and sociological findings and public comments and will have no adverse impact on the fisheries and habitat of the state. This proposal contains rule changes approved by the Natural Resources Board and the rules themselves will have no fiscal impact on either state or local units of government.

The procedures required to implement these rules have been budgeted for and will have no fiscal effect on state government except due to one–time costs for travel to hearings and printing hearing materials within current budget.

The following assumptions were made in order to arrive at the fiscal estimate for this rule change:

1. The proposed rules do not affect relations with local units of government or other state agencies.
2. No liability or revenue fluctuations are anticipated.
3. No additional staffing is required by state or local units of government.
4. State DNR law enforcement personnel will enforce these rules during the normal course of their duties.
5. No fee collection is involved with these rule changes.

Fiscal Impact:

None anticipated.

Notice of Hearing

Natural Resources

(Fish, Game, etc., Chs. NR 1––)

Notice is hereby given that pursuant to ss. 29.085, 29.174 (2) (a) and 227.11 (2) (a), Stats., interpreting s. 29.174 (3) (a), Stats., the Department of Natural Resources will hold a public hearing on revisions to ss. NR 20.02 (2) and 23.02, Wis. Adm. Code, relating to the Wisconsin–Michigan boundary waters.

Agency Analysis

Historically the water that lies beyond the mouth of the Menominee River out to the end of the two breakwalls has been considered boundary waters for the purposes of fishing license reciprocity, season and bag limits. Both Wisconsin and Michigan conservation wardens have advised anglers that all Menominee River boundary water regulations apply. Last spring a Michigan angler successfully challenged this interpretation. It was determined that this water in fact was part of Green Bay for which each state has different seasons and bag limits and to which license reciprocity does not apply.

The Department proposes to extend the definition of the Wisconsin–Michigan boundary waters to include the water of the bay of Green Bay between and out to the end of the breakwalls at Marinette/Menominee. This portion of Green Bay will be subject to the same rules as the Menominee River.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Environmental Assessment

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code; however, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

Notice is hereby further given that the hearing will be held on:

November 12, 1998 **2nd Floor Conference Rm.**
Thursday **Marinette City Hall**
at 1:00 p.m. **MARINETTE, WI**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Gary Homuth at (608) 266–3244 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments and Contact Person

Written comments on the proposed rule may be submitted to:

Mr. Gary Homuth
Bureau of Law Enforcement
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **November 18, 1998**, and will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [LE–49–98] and fiscal estimate may be obtained from Mr. Homuth.

Fiscal Estimate

Fiscal Impact:

This proposal will carry a cost in communicating this new rule change to the public through news releases and changes in the regulation pamphlet. No enforcement effort is expected for historically both Wisconsin Conservation Wardens and Michigan Conservation Officers have interpreted the law as including this portion of water boundary waters for the purposes of fishing license reciprocity, season and bag limits. The Department can carry out the provisions of this proposal within the current appropriation.

Notice of Hearings

Natural Resources
(Environmental Protection––General, Chs. NR 100––)

Notice is hereby given that pursuant to ss. 281.60 (5), (6) and (13) (b) and (c) and 227.11(2) (a), Stats., interpreting ss. 281.59 (3m) and 281.60, Stats., the Department of Natural Resources will hold public hearings on the creation of ch. NR 167, Wis. Adm. Code, relating to the land recycling loan program.

Agency Analysis

The Land Recycling Loan Program provides subsidized interest loans to cities, villages, towns and counties for remediating environmental contamination of landfills, sites or facilities at which environmental contamination has affected or threatens to affect groundwater or surface water. The proposed administrative rules establish the framework for participation in the Land Recycling Loan Program and include descriptions of eligible projects, priority criteria and scoring system for ranking projects, methods of providing financial assistance, application procedures and financial assistance commitments and agreements.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Environmental Assessment

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code; however, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

Notice is hereby given that the hearings will be held on:

November 13, 1998	**Constitution Room**
Friday	**Public Library**
at 10:00 a.m.	**7421 W. National Ave.**
	WEST ALLIS, WI
November 16, 1998	**Conference Room E**
Monday	**Courthouse**
at 10:00 a.m.	**1516 Church Street**
	STEVENS POINT, WI
November 19, 1998	**Classroom**
Thursday	**Superior Public Library**
at 10:00 a.m.	**1530 Tower Drive**
	SUPERIOR, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Thomas Reardon at (608) 267–0801 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule may be submitted to :

Mr. Thomas Reardon
Bureau of Community Financial Assistance
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **November 23, 1998** and will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [CF–57–98] and fiscal estimate may be obtained from Mr. Reardon.

Fiscal Estimate

Summary:

This administrative rule implements the Land Recycling Loan Program (LRLP) which was created in 1997 by Wis. Act 27. The LRLP would provide low interest rate loans to municipalities to assess, investigate and remediate brownfields. Clean Water Fund loan repayments originating from the federal revolving loan fund account would provide $20mm for the 1997–1999 biennium.

Fiscal Impact:

There is no state or local fiscal impact specifically associated with implementing this rule.

Notice of Hearings

Natural Resources

(Environmental Protection––Water Supply, Chs. NR 800––)

Notice is hereby given that pursuant to ss. 280.11, 281.17 (8) and (9), Stats., interpreting ss. 280.11, 281.17 (8) and (9), Stats., the Department of Natural Resources will hold public hearings on the creation of ch. NR 809, subch. VIII, Wis. Adm. Code, relating to public drinking water systems.

Agency Analysis

The proposed rule will allow the Department to implement a program for review of the technical, financial and managerial capacity at new nontransient, noncommunity and community water systems. The term "capacity" refers to the capability of new water systems to perform up to accepted levels for the three areas. Technical capacity is the capability of a system to comply with construction standards, have reliable water sources, have infrastructure maintenance and assure qualified operators. Financial capacity is the ability to meet current and future capital and operating needs. Managerial capacity is the personnel expertise required to administer overall system operations. The rule proposes a screening process by which the Department would review and approve system capacity evaluations prior to construction of the system.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected:

Mobile home parks or other businesses that own a nontransient, noncommunity water system.

b. Description of reporting and bookkeeping procedures required:

A system capacity evaluation must be prepared.

c. Description of professional skills required:

No new skills are required.

Environmental Assessment

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code; however, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

Notice is hereby further given that the hearings will be held on:

November 13, 1998	**Council Chambers**
Friday	**City Hall**
at 11:00 a.m.	**407 Grant Street**
	WAUSAU, WI
November 18, 1998	**Room 305, GEF 3**
Wednesday	**125 S. Webster St.**
at 9:00 a.m.	**MADISON, WI**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Lee Boushon at (608) 266–0857 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments and Contact Person

Written comments on the proposed rule may be submitted to:

Mr. Lee Boushon
Bureau of Drinking Water & Groundwater
P.O. Box 7921
Madison, WI 53707

Written comments must be received no later than **November 24, 1998**, and will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [DG–52–98] and fiscal estimate may be obtained from Mr. Boushon.

Fiscal Estimate

Fiscal Impact:

The proposed revisions to ch. NR 809 will have no fiscal impact on state or local governments.

Notice of Hearings

Public Instruction

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting s. 115.782, Stats., the department of public instruction will hold public hearings as follows to consider proposed permanent rules, relating to eligibility criteria for children with disabilities. The hearings will be held as follows:

Hearing Information

December 1, 1998 **Tuesday** **3:00 – 7:00 p.m.**	**Chippewa Falls** **CESA 10** **725 West Park Avenue** **Conference Center Rooms 1, 2 and 3**
December 1, 1998 **Tuesday** **4:00 – 7:00 p.m.**	**Wausau** **Northcentral Technical College** **1000 West Campus Drive** **Room D101**
December 2, 1998 **Wednesday** **3:00 – 7:00 p.m.**	**Rice Lake** **Wisconsin Indianhead Technical College** **1900 College Drive** **Room 247–49**
December 3, 1998 **Thursday** **3:00 – 7:00 p.m.**	**Ashland** **Wisconsin Indianhead Technical College** **2100 Beaser Avenue** **Room 306**

December 7, 1998 **Monday** **3:00 – 7:00 p.m.**	**Portage** **Portage Public Library** **253 West Edgewater Street** **Conference Room**
December 8, 1998 **Tuesday** **3:00 – 7:00 p.m.**	**Oshkosh** **CESA 6** **2300 State Road** **Main Conference Room**
December 8, 1998 **Tuesday** **3:00 – 7:00 p.m.**	**Fennimore** **CESA #3** **1300 Industrial Drive** **Conference Room**
December 9, 1998 **Wednesday** **3:00 – 7:00 p.m.**	**La Crosse** **Western Wisconsin Technical College** **405 8th Street, North** **Room 103**
December 9, 1998 **Wednesday** **3:00 – 7:00 p.m.**	**Gillett** **CESA 8** **223 West Park Street** **Aspen/Birch Room**
December 10, 1998 **Thursday** **3:00 – 7:00 p.m.**	**Green Bay** **Northeast Wisconsin Technical College** **2740 West Mason Street** **Room 2327**
December 14, 1998 **Monday** **4:00 – 7:00 p.m.**	**Madison** **GEF 3 Building** **125 South Webster Street** **Room 041**
December 15, 1998 **Tuesday** **3:00 – 7:00 p.m.**	**Milwaukee** **Administration Building** **5225 West Vliet Street** **Auditorium**

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access the meeting, please call Paul Halverson, Director, Exceptional Education, at (608) 266–1781 or leave a message with the Teletypewriter (TTY) at (608) 267–2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

A copy of the proposed rule and the fiscal estimate may be obtained by sending an email request to slausll@mail.state.wi.usor by writing to:

Lori Slauson, Administrative Rules
and Federal Grants Coordinator
Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above address no later than **December 31, 1998**, will be given the same consideration as testimony presented at the hearing. Comments submitted via email will not be accepted as formal testimony.

Analysis by the Department of Public Instruction

In November 1996, the department held twelve informational hearings throughout the state relating to special education requirements under Chapter PI 11, Wisconsin Administrative Code. As a result of testimony presented at those hearings, the state superintendent appointed seven task forces to develop criteria determining the need for special education services and to modify eligibility criteria relating to:

- Cognitive disabilities.
- Visual impairments.
- Hearing impairments.
- Speech and language impairments.
- Specific learning disabilities.
- Emotional behavioral disabilities.

As a result of the task force recommendations, the proposed rules modify provisions relating to the identification of a child with a disability. The intent of these proposed rules is to assist the IEP team participants in making an accurate determination of an impairment and need for special education. It is not the intent to expand the number of children eligible for special education services or to cause the identification rates of children with disabilities to increase. The department is specifically requesting comment on whether the proposed eligibility rules would result in increased special education identification rates.

When evaluating a child with a potential disability, the rules require that an IEP team:

- May not use any single procedure as a sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for the child.
- Must determine if an impairment specified in this chapter adversely affects the child's educational performance, thereby requiring the need of special education and related services on the part of the child.
- Must determine the child's needs that cannot be met in the regular education program, modifications that can be made in the regular education program, potential harmful effects if the child does not receive special education, and whether any additions or modifications need to be made to the child's special education and related services in order for the child to meet his or her goals.

The proposed rules also set forth eligibility criteria to identify children with cognitive disabilities, visual impairments, hearing impairments, speech and language impairments, specific learning disabilities, and emotional behavioral disabilities. The multiple handicapped impairment has been eliminated since a child with multiple impairments would be identified under one or more of the existing impairments. Finally, other technical modifications have been made to update terminology and to renumber and reorganize the section relating to impairments.

Fiscal Estimate

The proposed rule specifies criteria used in determining the need for special education. The rules also modify the eligibility criteria used to identify children with cognitive disabilities, visual impairments, hearing impairments, speech and language impairments, specific learning disabilities and emotional behavioral disabilities.

The eligibility criteria modified in these rules should not result in altering the size of the population of children identified as having a disability. Therefore, the rules are not expected to have a local or state fiscal effect.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114(1)(a), Stats.

Notice of Hearings

Public Instruction

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting subch. V of ch. 115, Stats., the department of public instruction will hold public hearings as follows to consider proposed permanent rules, relating to transfer pupils with disabilities and surrogate parents. The hearings will be held as follows:

Hearing Information

December 1, 1998	**Wausau**
Tuesday	**Northcentral Technical College**
3:00 – 4:00 p.m.	**1000 West Campus Drive**
	Room D101
December 14, 1998	**Madison**
Monday	**GEF 3 Building**
3:00 – 4:00 p.m.	**125 South Webster Street**
	Room 041

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access the meeting, please call Paul Halverson, Director, Exceptional Education, at (608) 266–1781 or leave a message with the Teletypewriter (TTY) at (608) 267–2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

A copy of the proposed rule and the fiscal estimate may be obtained by sending an email request to slausll@mail.state.wi.us or by writing to:

Lori Slauson, Administrative Rules
and Federal Grants Coordinator
Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above address no later than **December 31, 1998**, will be given the same consideration as testimony presented at the hearing. Comments submitted via email will not be accepted as formal testimony.

Analysis by the Department of Public Instruction

In November 1996, the department held twelve informational hearings throughout the state relating to special education requirements under Chapter PI 11, Wisconsin Administrative Code. As a result of testimony presented at those hearings, the proposed rules:

- Amend the section relating to transfer pupils to permit local educational agencies (LEAs) to treat out–of–state transfer pupils in the same manner as intrastate transfer pupils so that unnecessary delays in the provision of special education services does not occur.
- Delete the provision relating to surrogate parents that limits the number of children that may be appointed to the surrogate parent.

In addition, to make it easier for an LEA to obtain the services of a surrogate parent, the department will make the following changes:

- Delete the provision requiring a school board to notify the department of a surrogate parent's termination or resignation.
- Delete the provision prohibiting surrogate parents from serving as a surrogate parent as part of a job for a public agency.
- Delete the provision prohibiting surrogate parents from receiving payment for time spent acting as a surrogate parent.

The rule also makes several technical language and cross–reference modifications to coincide with the changes made in 1997 Wis. Act 164 and proposed changes made in CHR 98–068.

Fiscal Estimate

The proposed rules make several technical modifications to ch. PI 11, relating to children with disabilities and:

- Modify provisions allowing LEAs to treat pupils with disabilities transferring from out of state in the same manner as pupils with disabilities transferring from within the state.
- Modify provisions relating to surrogate parents.

These modifications were made to ensure that unnecessary delays in the provision of special education services do not occur for a child with disabilities and to make it easier for an LEA to obtain the services of a surrogate parent.

The proposed rules may reduce local costs due to provisions relating to transfer pupils. In the past when a pupil transferred to an LEA from out of state, the LEA would have to treat that pupil as a new referral, meaning the pupil would have to go through evaluation procedures, IEP development and placement determination. The proposed rules would allow a receiving LEA to accept the sending district's evaluation report and IEP if the receiving LEA determines the report and IEP are appropriate.

The proposed rules may increase local costs by allowing LEAs to pay qualified persons to act as surrogate parents. However, an increase in local costs would be voluntary since the rules do not require payments to be made to surrogate parents.

Fiscal Estimate

There is no state fiscal effect as a result of these proposed rules.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114(1)(a), Stats.

Notice of Proposed Rule

Revenue

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting ss. 77.54(14)(f) and 77.57, Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **November 1, 1998,** it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule:

Contact Person

Please contact Mark Wipperfurth at (608) 266−8253, if you have any questions regarding this proposed rule order.

Analysis by the Department of Revenue

Statutory authority: s. 227.11(2)(a)

Statutes interpreted: ss. 77.54(14)(f) and 77.57

SECTION 1. Tax 11.09(1), (2)(title) and (4)(e) are amended, to conform language to Legislative Council Rules Clearinghouse standards.

SECTIONS 2, 3 AND 5. Tax 11.09(4)(f) and 11.28(7) are created and Tax 11.09(6) is repealed, to reflect the sales and use tax exemption for certain medicines furnished without charge, as a result of the creation of s. 77.54(14)(f), Stats., by 1997 Wis. Act 27.

SECTION 4. Tax 11.28(2)(b) and (f), (3)(c)1.b. and (4)(c) are amended, to clarify that sales and use tax on property given away need not be measured by the cost of the property (e.g., the tax may be measured by its market value if the requirements of s. 77.57, Stats., are met).

Tax 11.28 (2)(c) is amended, to reflect that a retailer incurs a sales tax liability when a gift certificate is redeemed for taxable services.

Tax 11.28(4)(b) is amended, to reflect the department's position that sales of coupon books and voucher books are not taxable because they are sales of intangible rights.

Text of Rule

SECTION 1. Tax 11.09(1), (2)(title) and (4)(e) are amended to read:

Tax 11.09(1) DEFINITION. For the exemption in s. 77.54(14), Stats., "medicines" means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for ~~such~~ that use.

(2)(title) ~~EXAMPLES OF~~ ITEMS WHICH ARE MEDICINES.

(4)(e) Sold to this state or any political subdivision or municipal corporation ~~thereof~~ of the state, for use in the treatment of a human being; or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation ~~thereof~~ of the state.

SECTION 2. Tax 11.09(4)(f) is created to read:

Tax 11.09(4)(f) Furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, dentist licensed under ch. 447, Stats., podiatrist licensed under ch. 448, Stats., or optometrist licensed under ch. 449, Stats., if the medicine may not be dispensed without a prescription.

SECTION 3. Tax 11.09(6) is repealed.

Note to Revisor: Replace the second note at the end of Tax 11.09 with the following:

Note: The interpretations in s. Tax 11.09 are effective under the general sales and use tax law on and after September 1, 1969, except: The exemption for certain medicines furnished without charge became effective October 14, 1997, pursuant to 1997 Wis. Act 27.

SECTION 4. Tax 11.28(2)(b), (c) and (f), (3)(c)1.b. and (4)(b) and (c) are amended to read:

Tax 11.28(2)(b) *Grand opening gifts.* A person who sells tangible personal property to a retailer who uses the property as gifts at a grand opening or similar event, such as an open house, celebrity appearance or farm days, cannot accept a resale certificate in good faith if the seller is aware, or should be aware, of how the property will be used. In cases where a seller furnishes free property to a retailer for use as gifts

at a grand opening or similar event, the seller furnishing the property to the retailer without charge is subject to the sales or use tax on ~~its cost of~~ the property donated, unless the property is exempt from use tax under s. 77.56(3), Stats., because it is donated to an entity exempt from sales or use tax under s. 77.54(9a), Stats.

(c) *Gift certificates*. The gross receipts from the sale of a gift certificate are not taxable because the certificate represents an intangible right. When a gift certificate is redeemed for taxable tangible personal property or taxable services, the transaction is completed and the retailer's tax liability accrues at that time.

(f) *Gifts originally purchased for resale*. When a person purchases property for resale or for ~~other~~ another exempt purpose or under a valid exemption certificate but uses the property for a purpose other than for resale or ~~other~~ another exempt purpose and does not donate the property to an entity described in s. 77.54(9a), Stats., the purchaser shall be liable for ~~use~~ tax ~~based~~ on the ~~purchaser's cost of the new merchandise or ingredients~~ property.

(3)(c)1.b. A retailer may not use a resale certificate when purchasing taxable tangible personal property which the retailer knows, or should know, is to be given away to customers without the customers being required to purchase other property to receive the free property. If the property that is given away was acquired without tax for resale, the retailer shall report the ~~use~~ tax ~~based~~ on the ~~cost of the~~ property.

Note to Revisor: Replace example 2 at the end of sub. (3)(c)1.b. with the following:

2) A retailer purchases key chains that are subsequently given away to customers, regardless of whether the customer makes a purchase. If the retailer purchased the key chains without Wisconsin sales or use tax by giving its supplier a resale certificate, the retailer is liable for tax on the key chains given away.

(4)(b) ~~The~~ A sales promotional agency's receipts from sales of coupon or voucher books are not taxable, because the agency is ~~providing an advertising service~~ selling intangible rights. These intangible rights entitle the purchaser of the coupon or voucher book to receive tangible personal property or taxable services at a reduced price or for no charge. However, any receipts received by participating retailers from the sales promotional agency are subject to the sales tax, if taxable property or services are furnished to the person using the coupon or voucher. Any additional receipts received by the retailer from the person using the coupons or vouchers also are taxable.

(c) Retailers are subject to the sales and use tax on ~~their cost of~~ taxable property transferred when coupons are redeemed without consideration from a sales agency, the consumer or any other person unless an exemption applies.

Note to Revisor: Replace the example at the end of sub. (4)(c) with the following:

Example: Motel A provides a free breakfast with the purchase of lodging. Motel A purchases fruit, milk, cereal, bakery goods including rolls, bagels, muffins and bread, ground coffee beans, frozen juice, napkins, plastic utensils, and paper plates and cups from a vendor. Motel A prepares the coffee and juice. The food and beverages are placed on a table in the lobby. Motel A's customers may take as much or as little as they want of the food and beverage items.

Motel A's purchases of fruit, milk, cereal, bakery goods, ground coffee beans and frozen juice are not subject to Wisconsin sales or use tax because they are exempt food items not for direct consumption on the premises of the vendor under s. 77.54(20), Stats. Motel A's purchases of the napkins, plastic utensils and paper plates and cups are subject to sales or use tax because no exemption applies.

SECTION 5. Tax 11.28(7) is created to read:

Tax 11.28(7) CERTAIN MEDICINES FURNISHED WITHOUT CHARGE. No sales or use tax is owed on medicines furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, dentist licensed under ch. 447, Stats., podiatrist licensed under ch. 448, Stats., or optometrist licensed under ch. 449, Stats., if the medicine may not be dispensed without a prescription.

Example: A drug manufacturer furnishes medicine samples to doctors without charge. The medicine samples may not be dispensed without a prescription. The drug manufacturer does not owe sales or use tax on its cost of the ingredients for the medicine samples.

Note to Revisor: 1) Remove example 3 at the end of sub. (2)(a).

2) Replace the two notes at the end of Tax 11.28 with the following:

Note: Section Tax 11.28 interprets ss. 77.51(4)(a) and (14)(k), 77.54(14)(f), 77.56(3) and 77.57, Stats.

Note: The interpretations in s. Tax 11.28 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption from use tax of certain donated property became effective August 9, 1989, pursuant to 1989 Wis. Act 31; and (b) The exemption for certain medicines furnished without charge became effective October 14, 1997, pursuant to 1997 Wis. Act 27.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

The proposed rule interprets the sales and use tax exemption, created in 1997 Wis. Act 27, for prescription medicines furnished without charge by health practitioners, and clarifies the sales and use tax treatment of promotional gifts, gift certificates, and coupon and voucher books. These changes have no fiscal effect.

Notice of Proposed Rule

Transportation

Notice is hereby given that pursuant to the authority of ss. 85.16 and 347.25 (2), and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending ch. Trans 300 without public hearing unless, within 30 days after publication of this notice on **November 1, 1998**, the Department of Transportation is petitioned for a public hearing by

25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Contact Person

Questions about this rule and any petition for public hearing may be addressed to:

Lt. Sandra Huxtable
Dept. of Transportation
Division of State Patrol, Room 551
4802 Sheboygan Ave.
P. O. Box 7912
Madison, WI 53707–7912

Analysis Prepared by the Wis. Dept. of Transportation

Statutory authority: ss. 85.16 and 347.25 (2)

Statute interpreted: s. 347.25 (2)

General Summary of Proposed Rule:

This proposed rulemaking amending ch. Trans 300, relating to school bus equipment standards, will address the installation, operation and light output brilliance of the white strobe light which will be required on all school buses first registered in WI after October 1, 1998. Currently, s. Trans 300.54 (4) advises that the strobe light is an optional piece of equipment for use on school buses. 1997 Wis. Act 117 requires the strobe light as mandatory equipment for all buses first registered on or after October 1, 1998. The current specifications for optional strobe lights will be made applicable to the mandatory strobe lights, and the use of the lights will be required whenever a school bus is in operation on a highway for the purposes specified in s. 340.01 (56) (a) and (am), Stats.

Fiscal Estimate

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, vocational, technical and adult education district or sewerage district. The Department estimates that there will be no fiscal impact on state revenues or liabilities. The rule will not impose any fiscal effect on school districts other than that imposed by the amendment of s. 347.26(7), Stats.

Initial Regulatory Flexibility Analysis

This proposed rule will have no adverse impact on small businesses.

Copies of Proposed Rule

Copies of this proposed rule may be obtained upon request, without cost, by writing to Lt. Sandra Huxtable, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7912, Madison, WI 53707–7912, or by calling (608) 267–0325. Alternate formats of the proposed rule will be provided to individuals at their request.

Text of Proposed Rule

Under the authority vested in the state of Wisconsin Department of Transportation by ss. 85.16 and 347.25 (2), Stats., the Department of Transportation hereby proposes to amend a rule interpreting s. 347.25 (2), Stats., relating to school bus equipment standards.

SECTION 1. Trans 300.16 (1) is amended to read:

Trans 300.16 (1) Prior to the start of any trip, the driver shall check the condition of the bus, giving particular attention to brakes, tires, lights, emergency equipment, mirrors, windows, and interior cleanliness of the bus. Defects shall be reported in writing to the person in charge of bus maintenance. The driver shall be responsible for the cleanliness of the interior of the bus and shall ensure that the windshield and mirrors are clean before each school bus operation and that the strobe light is actuated whenever the bus is in operation on a highway for purposes specified in s. 340.01 (56) (a) and (am), Stats.

SECTION 2. Trans 300.54 (1) (am) (intro.) and 6. are created to read:

Trans 300.54 (1) (am) Each bus first registered on or after October 1, 1998, shall be equipped with a strobe light which shall conform with the following requirements:

6.The strobe light shall be actuated whenever the bus is in operation on a highway unless the bus is being operated in accordance with s. 346.48 (2) (c), Stats.

SECTION 3. Trans 300.54 (4) (intro.) is repealed.

SECTION 4. Trans 300.54 (4) (a) to (d) are renumbered s. Trans 300.54(1) (am) 1. to 4.

SECTION 5. Trans 300.54 (4) (e) is renumbered s. Trans 300.54 (1) (am) 5. and amended to read:

Trans300.54 (1) (am) 5. The unit ~~shall~~ may be wired with an independent switch with an indicator light in the driver's compartment showing when the light is in operation.

SECTION 6. Trans 300.54 (4) is created to read:

Trans 300.54 (4) School buses painted as provided in s. 347.44 and registered prior to October 1, 1998, may be equipped with a strobe light meeting the requirements of sub. (1) (am).

Notice of Proposed Rule

Transportation

Notice is hereby given that pursuant to the authority of ss. 85.16 (1), 110.075 and 227.10 (1), Stats., and interpreting s. 347.48, Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending ch. Trans 305 without public hearing unless, within 30 days after publication of this notice on **November 1, 1998**, the Department of Transportation is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Contact Person

Questions about this rule and any petition for public hearing may be addressed to:

Lt. Sandra Huxtable
Dept. of Transportation
Division of State Patrol, Room 551
4802 Sheboygan Ave.
P. O. Box 7912
Madison, WI 53707–7912

Telephone (608) 267–0325

Analysis Prepared by the Wis. Dept. of Transportation

Statutory authority: ss. 85.16 (1), 110.075 and 227.10 (1)

Statute interpreted: s. 347.48

General Summary of Proposed Rule:

The proposed rule amends s. Trans 305.27 (3) (a) to clarify that this provision is intended to require that airbags which have been deployed must be replaced so that the vehicle continues to have all restraining devices with which it was originally manufactured. This was the intention of the Department of Transportation when ch. Trans 305 was created, effective March 1, 1996. However, some law enforcement officers and citizens expressed confusion with the present language and, therefore, the Department wishes to amend the rule to give clear notice to vehicle owners of their obligation to replace deployed airbags.

Fiscal Estimate

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district, sewerage district, or any federally–recognized American Indian tribes or bands.

Initial Regulatory Flexibility Analysis

This proposed rule will have no adverse impact on small businesses.

Copies of Proposed Rule

Copies of the rule may be obtained upon request, without cost, by writing to Frieda Andreas, or by calling (608) 266–6936. Alternate formats of the proposed rule will be provided to individuals at their request.

Text of Proposed Rule

Under the authority vested in the state of Wisconsin Department of Transportation by ss. 85.16(1), 110.075 and 227.10 (1), Stats., the Department of Transportation hereby proposes an order to amend a rule interpreting s. 347.48, Stats., relating to vehicle restraining devices.

SECTION 1. Trans 305.27 (3) (a) is amended to read:

Trans 305.27 (3) (a) Except as provided in par. (b), the restraining devices, including air bags, of every motor vehicle shall be maintained in proper working condition and in conformity with this section and s. 347.48, Stats. All required and optional restraining devices, including air bags, shall remain installed or be replaced by like equipment. All airbags that have been deployed shall be replaced with a comparable functioning airbag system.

Notice of Submission of Proposed Rules to the Presiding Officer of each House of the Legislature, Under S. 227.19, Stats.

Please check the Bulletin of Proceedings for further information on a particular rule.

Commerce (CR 98–99):
Ch. Comm 67 – Relating to rental unit energy efficiency standards.

Commerce (CR 98–100):
Chs. Comm 32 and ILHR 32 – Relating to public employe safety and health.

Commerce (CR 98–109):
Ch. ILHR 57, Subch. II – Relating to the exemption of accessibility requirements for certain multilevel multifamily dwelling units.

Financial Institutions––Securities (CR 98–114):
Chs. DFI–Sec 2, 3 and 5 and ss. DFI–Sec 1.02, 7.07 and 9.01 – Relating to federal covered securities, federal covered advisers and investment adviser representatives.

Natural Resources (CR 98–73):
Chs. NR 191 and 192 – Relating to lake protection grants and lake classification technical assistance grants.

Transportation (CR 98–31):
Ch. Trans 29 – Relating to accommodating utility facilities on state–owned railroad corridors.

Transportation (CR 98–105):
Chs. Trans 325, 326 and 328 – Relating to:
- motor carrier safety regulations;
- motor carrier safety requirements for transportation of hazardous materials; and
- motor carrier safety requirements for intrastate transportation of hazardous materials.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266−7275 for updated information on the effective dates for the listed rules.

Controlled Substances Board (CR 98−54):

An order creating s. CSB 2.24, relating to adding butorphanol to the classification of controlled substances in schedule IV of ch. 961, Stats., the Uniform Controlled Substances Act.

Effective 12−01−98.

Health & Family Services (CR 98−69):

An order affecting ch. HFS 89, relating to residential care apartment complexes (formerly known as "assisted living facilities").

Effective 12−01−98.

Natural Resources (CR 97−89):

An order affecting ch. NR 140, relating to groundwater quality standards.

Part effective 01−01−99.
Part effective 12−31−99.
Part effective 01−01−00.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

The following administrative rule orders have been adopted and published in the ***October 31, 1998*** *Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

For subscription information, contact Document Sales at (608) 266–3358.

Corrections (CR 98–70):
An order amending s. DOC 328.22 (5), relating to the custody and detention of felony probationers and parolees.
Effective 11–01–98.

Health & Family Services (CR 98–47):
An order amending s. HFS 196.03 (22) (e) to (f) and creating s. HFS 196.03 (22) (g) and Note, relating to exemption of concession stands at locally–sponsored sporting events from being regulated as restaurants.
Effective 11–01–98.

Insurance, Commissioner of (CR 98–58):
An order amending s. Ins 2.30, relating to adopting additional annuity mortality tables.
Effective 01–01–99.

Natural Resources (CR 97–146):
An order creating s. NR 5.21 (3), relating to waiver of the slow–no–wake speed restriction on Lake Tombeau, Walworth County.
Effective 11–01–98.

Natural Resources (CR 98–20):
An order affecting ss. NR 21.02 21.04, 21.10, 21.11 and 21.12, relating to commercial fishing in the Wisconsin–Minnesota boundary waters.
Effective 11–01–98.

Natural Resources (CR 98–56):
An order repealing and recreating s. NR 46.30 (2) (a) to (c), relating to the administration of the Forest Crop Law and the Managed Forest Law.
Effective 11–01–98.

Natural Resources (CR 98–66):
An order repealing and recreating ch. NR 300, relating to fees for waterway and wetland permit decisions.
Effective 11–01–98.

Public Defender (CR 98–89):
An order amending s. PD 3.02 (1), relating to the cost of retained counsel.
Effective 11–01–98.

Public Instruction (CR 98–38):
An order affecting ss. PI 3.03 and 3.05, relating to environmental education requirements and an urban education license.
Effective 11–01–98.

Public Service Commission (CR 97–157):
An order amending s. PSC 112.05, relating to electric construction by public utilities requiring Public Service Commission review and approval.
Effective 11–01–98.

Public Service Commission (CR 98–49):
An order:
1) Amending ss. PSC 160.05, 160.11 (6) and 160.17, relating to the provision of universal telecommunications service and administration of the universal service fund; and
2) Creating ch. PSC 161, relating to establishing the Educational Telecommunications Access Program (per TEACH WI).
Effective 11–01–98.

Social Workers, Marriage & Family Therapists and Professional Counselors Examining Board (CR 97–119):
An order affecting ss. SFC 1.05, 11.035, 14.01 and 14.02, relating to examination requirements and procedures, academic programs equivalent to master's and doctorate degrees in professional counseling, and temporary certificates for professional counselors.
Effective 11–01–98.

Wisconsin Technical College System Board (CR 98–59):
An order creating ch. TCS 15, relating to faculty development grants.
Effective 11–01–98.

Transportation (CR 98–82):
An order affecting ch. Trans 132, relating to temporary license plate and permits.
Effective 11–01–98.

Workforce Development (CR 98–26):
An order affecting s. DWD 12.25, relating to amendments to the Learnfare program.
Effective 11–01–98.

SECTIONS AFFECTED BY RULE REVISIONS AND CORRECTIONS

The following administrative rule revisions and corrections have taken place in October, 1998, and will be effective November 1, 1998. For additional information, contact the Revisor of Statutes Bureau at (608) 266–7275.

REVISIONS

Corrections:
Ch. DOC 328
S. DOC 328.22 (5)

Health & Family Services:
(Health, Chs. HFS/HSS 110––)
Ch. HFS 196
S. HFS 196.03 (22) (e), (f) and (g)

Insurance:
Ch. Ins 2
S. Ins 2.30 (entire section)

Natural Resources:
(Fish, Game, etc., Chs. NR 1––)
Ch. NR 5
S. NR 5.21 (3)

Ch. NR 21
S. NR 21.02 (2), (4g), (4m), (4p), (5e), (5m), (5t), (6g), (7m), (7r), (9), (11f), (11m), (15p), (15v) and (16)
S. NR 21.03 (entire section)
S. NR 21.04 (15)
S. NR 21.10 (entire section)
S. NR 21.11 (1) (intro.), (a), (b), (cf), (cm), (e), (f), (g), (h), (i), (k), (m), (n) and (o) and (2) to (7)
S. NR 21.12 (entire section)

Ch. NR 22
S. NR 22.02 (14)
S. NR 22.03 (entire section)

Ch. NR 46
S. NR 46.30 (2) (a) to (c)

(Water Regulation, Chs. NR 300––)
Ch. NR 300 (entire chapter)

Public Defender:
Ch. PD 3
S. PD 3.02 (1)

Public Instruction:
Ch. PI 3
S. PI 3.03 (12)
S. PI 3.05 (4) and (4m)

Public Service Commission:
Ch. PSC 112
S. PSC 112.05 (1m) (a), (2) and (3)

Ch. PSC 160
S. PSC 160.05 (intro.), (1) to (10)
S. PSC 160.11 (6)
S. PSC 160.17 (entire section)

Ch. PSC 161 (entire chapter)

Social Workers, Marriage & Family Therapists and Counselors Examining Board:
Ch. SFC 1
S. SFC 1.05 (2) and (4)

Ch. SFC 11
S. SFC 11.035 (entire section)

Ch. SFC 14
S. SFC 14.01 (2) (intro.)
S. SFC 14.02 (2)

Technical College System Board:
Ch. TCS 15 (entire chapter)

Transportation:
Ch. Trans 132
S. Trans 132.02 (7m)
S. Trans 132.03 (intro.), (3) and (5)
S. Trans 132.04 (1) (c) and (3) (a)
S. Trans 132.05 (entire section)
S. Trans 132.06 (entire section)
S. Trans 132.07 (entire section)
S. Trans 132.08 (2)
S. Trans 132.09 (entire section)
S. Trans 132.10 (entire section)
S. Trans 132.11 (entire section)

Workforce Development
(Economic Support, Chs. DWD 11–59)
Ch. DWD 12
S. DWD 12.25 (1), (2) (b), (3) (a) to (e), (g) and (i) to (p), (4) (a) to (e), (g), (5) (a) to (d), (f) and (g), (6) (a) and (b), (7) (a) and (b), (9) (a), (10) and (11) (a), (b) and (c)

EDITORIAL CORRECTIONS

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing:

Natural Resources:

(Water Regulation, Chs. NR 300––)

Ch. NR 305

S. NR 305.06 (entire section)

Public Defender:

Ch. PD 2

S. PD 2.08 (3)

ERRATA

Several sections have been reprinted to correct printing errors such as dropped copy, and are indicated in the following listing:

Commerce:

(Building & Heating, etc., Chs. Comm 50 to 64)

Ch. Comm 60

S. Comm 60.33 (2) reprinted to restore dropped copy.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Corrections (CR 98–70)

S. DOC 328.22 (5) – Custody and detention of felony probationers and parolees.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule is not expected to impact on small businesses as defined in s. 227.14 (1) (a), Stats.

Summary of Comments:

No comments were reported.

2. Health & Family Services (CR 98–47)

S. HFS 196.03 (22) (e) to (g) – Exemption of concession stands at locally sponsored sporting events from being regulated as restaurants.

Summary of Final Regulatory Flexibility Analysis:

The rules will not affect small businesses as "small business" is defined in s. 227.114 (1)(a), Stats. They implement a statutory change. Section 254.61 (5) (g), Stats., as created by 1997 Wis. Act 27, exempts concession stands at locally sponsored sporting events from being regulated as restaurants. The rulemaking order adds the exemption to a list of exempt food service operations in the Department's rules for restaurants and in the process defines "concession stand" and "locally sponsored sporting event."

Summary of Comments:

No comments were reported.

3. Insurance (CR 98–58)

S. Ins 2.30 – Adopting additional annuity mortality tables.

Summary of Final Regulatory Flexibility Analysis:

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing:

The legislative standing committees had no comments on this rule.

4. Natural Resources (CR 97–146)

Ch. NR 5 – Slow–no–wake speed restriction on Tombeau Lake, Walworth County.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules do not regulate businesses; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly Natural Resources Committee and the Senate Environment and Energy Committee. On August 5, 1998, the Assembly Natural Resources Committee held a public hearing. There were no recommendations made as a result of the public hearing.

5. Natural Resources (CR 98–20)

Ch. NR 21 – Commercial fishing in the Wisconsin–Minnesota boundary waters.

Summary of Final Regulatory Flexibility Analysis:

This rule will directly affect licensed commercial fishers on the Wisconsin–Minnesota boundary waters. No new reporting, design or bookkeeping requirements were added in the proposed rule.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly Natural Resources Committee and the Senate Environment and Energy Committee. On August 5, 1998, the Assembly Natural Resources Committee held a public hearing. There were no recommendations made as a result of the public hearing.

6. Natural Resources (CR 98–56)

Ch. NR 46 – Stumpage values for Forest Crop Law and Managed Forest Law Lands.

Summary of Final Regulatory Flexibility Analysis:

The rule does affect small business. Small private forest landowners and forest industries enrolled under the Forest Crop Law and the managed Forest Law are required to pay 10% and 5% respectively of the stumpage value adopted in the zone for the species and wood product volume cut from their land. Existing compliance and reporting procedures are defined by statute.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly Natural Resources Committee and the Senate Environment and Energy Committee. On August 5, 1998, the Assembly Natural Resources Committee held a public hearing. There were no recommendations made as a result of the public hearing.

7. Natural Resources (CR 98–66)

Ch. NR 300 – Fees for waterway and wetland permit decisions.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule will not have an adverse impact on small businesses. Standard permit fees are increasing only slightly. With additional staff dedicated specially to expedited processing, standard permit processing times should not be affected.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly Natural Resources Committee and the Senate Environmental and Energy Committee. On August 5, 1998, the Assembly natural Resources Committee held a public hearing. There were no recommendations made as a result of the public hearing.

8. Public Defender (CR 98–89)

Ch. PD 3 – The cost of retained counsel.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule is not expected to impact on small businesses as defined in s. 227.14 (1) (a), Stats.

Summary of Comments:

No comments were reported.

9. Public Instruction (CR 98–38)

Ch. PI 3 – The environmental education requirements and an urban education license.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule is not expected to impact on small businesses as defined in s. 227.14 (1) (a), Stats.

Summary of Comments:

No comments were reported.

10. Public Service Commission (CR 97–157)

Ch. PSC 112 – Electric construction by public utilities requiring public service commission review and approval.

Summary of Final Regulatory Flexibility Analysis:

This is a Type II action under s. PSC 4.10 (2), Wis. Adm. Code. An environmental assessment was prepared to determine if an environmental impact statement is necessary under s. 1.11, Stats. It has been determined that no significant environmental impacts are likely. Therefore, an environmental impact statement is not required.

Summary of Comments:

No comments were reported.

11. Public Service Commission (CR 98–49)

Chs. PSC 160 & 161 – Educational telecommunications access program.

Summary of Final Regulatory Flexibility Analysis:

Existing universal service fund rules may have an effect on small telecommunications utilities, which are small businesses under s. 196.216, Stats., for the purposes of s. 227.114, Stats. These small telecommunications utilities, of which there are 79 in Wisconsin, like other telecommunications providers (both large and small), have obligations under the universal service fund, including an obligation for payments to the universal service fund. Under the rules proposed in this proceeding, there will be further assessments for the fund per the requirements and the existing rules in ch. PSC 160, Wis. Adm. Code.

Other provisions of these proposed rules should have no direct impact on small businesses. The Commission already has established in s. PSC 160.18 (1)(a), Wis. Adm. Code, a policy and provision to make an exemption from fund assessments to protect entry by and continued operation of small telecommunications providers as directed by statutory objectives.

The agency has considered the methods in s. 227.114 (2), Stats., for reducing the impact of the rules on small businesses. Other than the provisions for exemption from assessments for small providers noted above, these methods are not appropriate nor consistent with statutory objectives. No reporting or other measures are required by small telecommunications utilities to comply with the rule. The proposed rule has no impact on public health, safety and welfare.

There were no issues raised by small businesses during the hearing or in written comments that needed to be considered in the proposed rules.

Summary of Comments:

No comments were reported.

12. Social Workers, Marriage & Family Therapists & Counselors Examining Board (CR 97–119)

Chs. SFC 1, 11 & 14 – Examination requirements and procedures, academic program equivalent to master's and doctorate degrees in professional counseling, and temporary certificates for professional counselors.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule is not expected to impact on small businesses as defined in s. 227.14 (1) (a), Stats.

Summary of Comments:

No comments were reported.

13. Technical College System (CR 98–59)

Ch. TCS 15 – Faculty development grants.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule is not expected to impact on small businesses as defined in s. 227.14 (1) (a), Stats.

Summary of Comments:

No comments were reported.

14. Transportation (CR 98–82)

Ch. Trans 132 – Temporary license plate and permits.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule will have no adverse impact on small businesses.

Summary of Comments:

No comments were reported.

15. Workforce Development (CR 98–26)

S. DWD 12.25 – Learnfare amendments.

Summary of Final Regulatory Flexibility Analysis:

A final regulatory flexibility analysis is not required because small businesses are not affected by these rules. These rules implement legislative amendments to the Learnfare program and affect W–2 participants with children between the ages of 6 and 17.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee and Senate Committee. There were no comments.

EXECUTIVE ORDERS

The following is a listing of recent Executive Orders issued by the Governor.

Executive Order 354. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half−Staff as a Mark of Respect for the Memory of the Late Dale Ten Haken of the Manitowoc Police Department.

Executive Order 355. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half−Staff as a Mark of Respect for Fire Fighters of this State Who Have Given Their Lives in the Line of Duty.

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